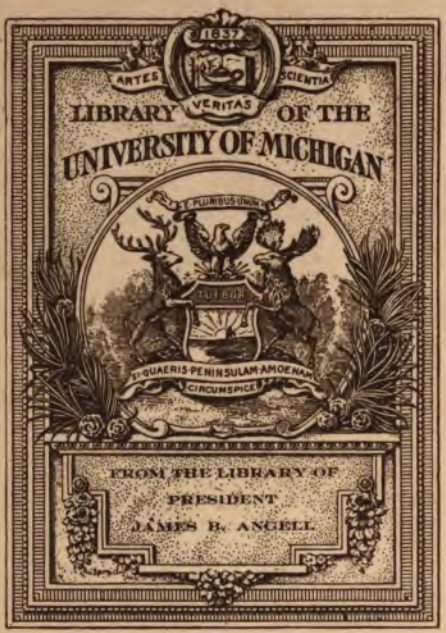
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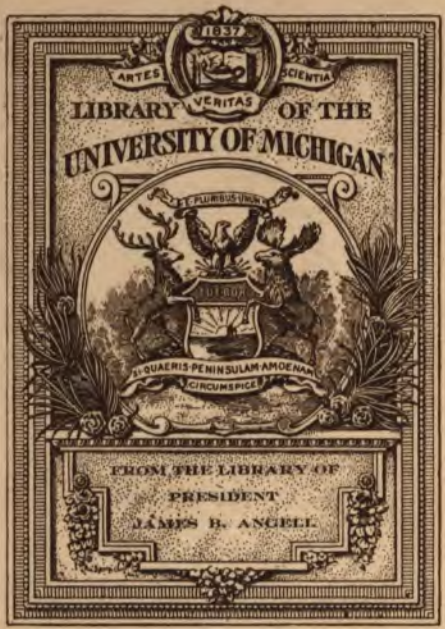
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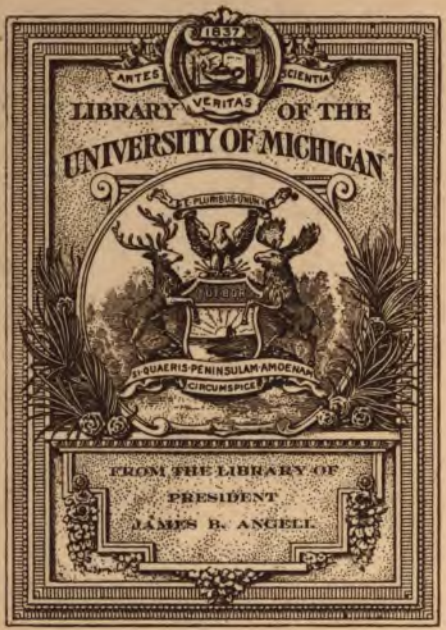
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INTERNATIONAL LAW

A SIMPLE STATEMENT OF ITS PRINCIPLES

BY

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PREFACE.

This book, in which an attempt is made to present the principles of international law simply and concisely, is, to a great degree, but an amplification of notes taken on treaties, municipal laws, and the works of publicists, especially Wheaton, Woolsey, and Wharton, by

THE AUTHOR.

BARCELONA, SPAIN,
June 8, 1896.

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INTERNATIONAL LAW.

1.

International law is the law recognized by civilized nations as applicable to them in their relations one with another. **Definition of international law.**

2.

It has always existed, but until modern times only in an elementary form. **Its age.**

3.

The Asiatics were too regardless of human rights to develop it. **Not developed by the Asiatics.**

4.

The Greeks and Romans, although great law-makers, were too powerful and entertained too much contempt for their neighbors, to establish with them, or to feel any obligation to establish with them, any system of law to govern their relations with them. **Nor by the Greeks and Romans.**

5.

Mediæval Europe prepared the way for its development.

After the fall of Rome the process was begun of consolidating the various peoples and tribes in Europe on ethnological and geographical principles, and was carried on so successfully that for the first time in history many separate and distinct nations were at last evolved, of comparatively equal pretension and power.

6.

Development began after the discovery of America.

So close was the contact of these nations, and so conflicting, or seemed to be, their interests after the discovery of America and the agitation produced within their borders by the revival of learning and the dawn and progress of the Reformation, that they were soon forced to make agreements, conventions, and treaties with one another in regard to their rights and duties. Every period since then has laid its own particular and peculiar stress on the necessity of continuing to bring the nations into closer accord and harmony, and has thus secured and assured the continuous development of international law.

7.

Its character.

International law is, therefore, a law of growth. It has undergone, and must always undergo, the modifications and changes essential to healthy development that are prescribed by experience, reason, and conscience.

8.

As international tribunals are not established for the sole purpose of determining what international law is, it must be sought out in municipal codes, in the decisions of eminent judges, in the international agreements, conventions, and treaties that have been made, and in the works of competent publicists and essayists of the various nations.

Where to be found.

9.

A nation is a people possessed of territory and of a government. If independent, it is a sovereignty: otherwise it is not. Objection is made to the use of the word "nation" in this sense, and the word "state" is generally preferred. But "state" is not satisfactory, because it is employed to define parts of territory, and also because it forms neither adjective nor adverb. What further argument may be required for the use of the word "nation" is found in the generally approved term, Inter*nation*al law.

Definition of nation.

10.

The meaning of the word "sovereignty" is supreme power, and that power is vested in every independent nation. Subject to that restriction, every sovereign nation has supreme power over its own territory and territorial waters. It may establish the

Sovereignty.

form of government it chooses; may assert and protect its right to self-preservation and independence; may keep an army and a navy; may make and enforce its own laws, impose taxes, and exercise the right of eminent domain; may enter into relations with other nations; may make war; may plant colonies, establish protectorates, and may acquire and annex new territory; and may claim equality of all other rights enjoyed by other sovereign nations. Also it may give up all its sovereign rights, and be merged in another nation; or it may surrender a part of them, and become a member of a confederation; but it can never surrender the part that permits it to enter into relations with other sovereign nations, and to make war, without losing its sovereignty, for these two powers are the essential characteristics of sovereignty.

II.

Acquisition of sovereignty.

When a people secures its independence, and exercises the rights of sovereignty within its territories, it is a sovereign nation, and is entitled to claim recognition as such from the governments of the other sovereign nations. Thus recognized, it enters into the society of nations, and participates in their privileges; but it must be recognized by all before its admission to membership is complete. If not recognized by all, it exercises its external sovereignty only in its relations with those that do recognize it.

12.

Title to territory is acquired by discovery and possession; by purchase; by conquest; by treaty; and by prescription, or uninterrupted and exclusive possession during such a length of time as to make it unreasonable for another nation to set up a prior or an adverse title.

Title to territory.

13.

Discovery alone is not sufficient to give title; it must be followed by possession. The title, in the case of an island, extends over all of it, even if it is not all actually occupied. In the case of a river, the title covers the region it drains, and is made clearer by the exploration of that region and by the establishment of a settlement at the mouth of the river. When a coast is discovered and explored, and a claim is made to the interior country, the title to the entire territory thus claimed is valid as against those that concede its sufficiency, but not as against the natives or any nation that disputes it. In such a case the title must be made clear by treaty or force.

Discovery and possession.

14.

One nation may purchase territory of another. The sovereignty of the seller then ceases and passes to the purchaser; but existing rights of individuals to the soil are not changed, and the existing laws of the territory remain in full force [illegible]red by

By purchase.

the new sovereign. The laws that prevailed before the transfer must be noticed in disputes as to titles.

15.

When territory is obtained by conquest the inhabitants are brought forcibly under the dominion of a new sovereign, but their individual property rights remain unaltered, and their laws continue to operate until changed by the new sovereign.

By conquest.

16.

Title to territory in dispute between nations may be settled by treaty; and by treaty also may provisions be made for the sale or disposition of lands in the territory ceded, or in purchased or conquered territory, by individuals who do not desire to change their nationality and allegiance.

By treaty.

17.

Generally speaking, however new territory may be acquired, its existing obligations to other nations, as well as its rights and privileges, pass to the new sovereign. This rule applies especially to debts that the people of the new territory cannot properly be required to pay.

Obligations of the new sovereign.

18.

After new territory has been acquired by purchase, conquest, or treaty, the former sovereign cannot convey the title to it to another nation nor impose any new obligations on it.

Former sovereign's rights cease.

19.

A nation's territory includes not only all the lands but also all the waters wholly within, or substantially embraced within, its limits, and also the sea to a distance of three miles from the coast. The sea limit has sometimes been fixed at the length a cannon ball could be projected from the coast, which was formerly about three miles, but which is now so much greater that such a method of fixing the limit should be held obsolete.

Extent of sovereignty.

20.

Nations have frequently set up claims to jurisdiction over littoral seas or bays, but such claims have not been held valid unless the promontories or headlands including them belong solely to the claimant, and are not very distant from each other. Furthermore, international law does not favor the claims of a nation to exclusive jurisdiction over seas, bays, or rivers that are partly within the territory of another nation, and that must be used by that other nation in order to obtain convenient access to its territory from the high seas. A claim to which no objection is made is that of nations to exercise jurisdiction over the sea beyond the three-mile limit for revenue purposes. The United States and Great Britain have each fixed on the distance of four leagues from their coasts as their limit for such additional jurisdiction.

Claims to additional jurisdiction.

21.

The high seas are the common property of all nations; but a vessel when and while on the high seas is (unless abandoned, in which case she is simply property) deemed territory under the sovereignty and jurisdiction of the nation to which she belongs. But if she is criminally employed, as for instance in a piratical enterprise, she may be seized, and in that case the nation to which she belongs cannot justly claim that its territory has been invaded and that its sovereign rights have been violated.

The high seas.

22.

A sea that is equally free to the navigation of ships of all nationalities is called a mare liberum. A sea that is not free is called a closed sea, or mare clausum.

Mare clausum and mare liberum.

23.

The high seas belonging to all nations in common, the right to use them beyond the three-mile limit is a common right.

Right to use the high seas.

24.

Special rights, such as of trade and fishing, within the three-mile limit are to be secured by treaty when not authorized by comity.

Special rights within the three-mile limit.

25.

It is customary for the nations to permit friendly foreign war vessels to traverse, and anchor in, the waters within the three-mile limit and to extend the hospitality to them of their ports and harbors either for an indefinite time or for a definite time according to the special rule of each nation.

War vessels.

26.

It is customary for vessels to salute each other on the high seas by striking their flags or the sails. On entering foreign ports or harbors they must observe the ceremonials prescribed by the treaties of their respective governments with the government to which the ports or harbors belong, or, in the absence of treaties, by the municipal ordinances in force in such ports or harbors.

Ceremonials.

27.

Arms of the sea dividing territory belonging even exclusively to one nation and sea straits are public highways, and no jurisdiction can be claimed over them that derogates from their character as public highways. An exception to this rule has been made in the case of the Dardanelles and the Bosphorus, which are at all times closed to men-of-war except when the Sultan opens them to secure the execution of treaty obligations.

Free navigation of highways of the sea.

28.

Recent treaties have established the rule that all waters are open to the free navigation of mercantile ships of nations bordering on such waters. This rule applies even to the part of the river that lies wholly within the territory of a single nation, unless it be the entire upper part of the river, in which case that upper part is wholly under the jurisdiction of such nation, but even so the waters may not be cut off or directed to the detriment of the other riparian nations.

Of waters by riparian sovereignties.

29.

When nations are separated by water the middle of the channel (filum aquæ or Thalweg) that is best adapted for navigation is the boundary line between them. In the absence of a superior channel, the middle of the stream is the boundary line, unless a larger title can be proved by one of the nations.

Filum aquæ or Thalweg.

30.

As a rule all rivers not lying wholly within the territory of a single nation have been opened by express compact to the merchant ships of all nations during times of both peace and war for the purposes of legitimate trade.

Opening of rivers to ships of all nations.

31.

By the convention signed at the Porte in 1888 the Suez

Canal was opened both to the merchant and war vessels of all nations in times of peace and war, and it was freed from the exercise of the right of blockade.

The Suez Canal.

32.

By the Clayton-Bulwer treaty, 1850, the United States and England virtually engaged to neutralize any inter-oceanic canal that might be constructed across any part of Central America. This treaty, however, is repugnant to the policy of the United States not to share their tutelary power over the American continent with any European nation or nations, and authoritative declarations have since been made that the United States will assert and maintain such control over any Central American canal that may be opened as will ensure its protection from European authority over it, and as will be compatible with their interests and with the requirements of commerce and of civilization.

Central American canals.

33.

Merely the opening of water-ways now renders intercourse among the nations practically unavoidable; and civilized or uncivilized, willingly or unwillingly, they will all have to enter into more or less close relations with one another. Just how close those relations should be international law does not prescribe, for it is reluctant to derogate from the privileges of sovereignty. It does,

Intercourse among the nations unavoidable, but its extent not prescribed.

however, enjoin on the nations the duties of comity and humanity, and when they enter into closer relations it provides rules to be observed not only in establishing them, but in maintaining them, or in breaking them off. Specific rules it does not furnish to meet every case; but, when they are wanting, it has general rules that apply, including those that recommend justice and morality.

34.

Comity is courtesy, friendliness, and respect combined; and it is especially applicable as between nation and nation. Humanity, on the other hand, does not apparently take nationality into consideration, but only the suffering individual, class, or community, and is synonymous with kindness, hospitality, and sympathy.

Comity and humanity.

35.

In order to facilitate, refine, and dignify intercourse and to secure timely, valuable, and authoritative information, it is customary for the governments of friendly nations to accredit to one another diplomatic agents.

Diplomatic agents.

36.

Classes. Diplomatic agents are divided into four classes:

1. Ambassadors, legates, and nuncios of the Pope. These alone have what is termed the "representative"

character, and for the reason that they are deemed to represent *quasi* personally their sovereign or their state they are considered to be entitled to receive special honors.

2. Ministers plenipotentiary and envoys. This class differs from the first class only in not having the representative character.

3. Ministers resident. These differ from the two preceding classes only in rank. All three classes are accredited by the monarch or government of their nation to a foreign monarch or government.

4. Chargés d'affaires. These are either chargés d'affaires *ad hoc*, accredited by their governments to the minister of foreign affairs of the nation in which they are to act, or are chargés d'affaires *ad interim*, being generally secretaries of legation called upon to perform the duties of the diplomatic agent during his absence.

37.

Protestant nations are in no sense bound to receive diplomatic agents of the Pope. **Those of the Pope.**

38.

A nation should not be expected to receive or to retain a diplomatic agent who is not a *persona grata*, and the government that sent him may be properly requested to recall him. **Refusal to receive or retain.**

39.

When a diplomatic agent arrives at his post he presents his letter of credence, which is issued by his government. His letter of recall is also issued by his government; but letters of recredence are issued by the government to which he is accredited, and it recommends him back to his government. In monarchies a new letter of credence may be required of the diplomatic agent when a new monarch comes to the throne. In republics a new letter of credence is not customarily expected on the inauguration of a new president.

Letters of credence, recall, and recredence.

40.

The diplomatic agent is provided by his government with a passport, which is sufficient protection for him in times of peace; but in times of war he is provided by the government to which he is accredited with a safe-conduct as an additional safeguard for him while in its territory.

Passports and safe-conducts.

41.

Diplomatic agents of the same class are entitled to claim a uniform mode of reception by the government to which they are accredited.

Mode of reception.

42.

The diplomatic agents of each class take precedence

among themselves according to the date of the official notification of their arrival at their post of duty. The rules of precedence apply not only to ceremonials of state but to the transaction of business with the foreign office.

Precedence.

43.

The rules of precedence may be, and undoubtedly should be, relaxed by the foreign office so that the first diplomatic agent who calls to transact business should be the first received. In the absence of the rule *detur priori*, a diplomatic agent of inferior rank who has waited an hour could not be received first if an agent of superior rank happened to arrive even at the last moment.

Detur priori.

44.

The difference in rank of diplomatic agents is the principal difference among them. Their business is practically the same, and they are protected to the same extent by international law.

Difference in rank, but not in business.

45.

Sometimes special diplomatic agents are charged with some specific duty of a temporary kind, such as attending a court ceremonial or arranging a treaty. They belong to the class to which they are appointed, and have all the rights and privileges of that class.

Special diplomatic agents.

46.

One diplomatic agent may be accredited to several governments, or several diplomatic agents may be accredited to one government, or one or more diplomatic agents may be sent to a congress of nations without being accredited to any particular government.

One or more may be accredited to serve at one court or different courts or at a congress.

47.

Extraordinary privileges, termed "immunities," are conceded to diplomatic agents. The reason for this is that they act for their governments, and consequently are considered to be entitled to marked respect and to exemption from local obligations that would tend to interfere with the performance of their high duties.

Immunities.

48.

Such sacredness attaches to the person of the diplomatic agent that the government to which he is accredited is required to protect him by every means in its power against assault or any other indignity, except when duly directed against him in self-defence, or in preventing him from committing a criminal or other intolerable illegal act, or in expelling him from the country for his misconduct.

Inviolability.

49.

Diplomatic agents, their families, secretaries, profes-

sional attendants, and servants, their embassies or legations, their residences, and all property belonging to them in their capacity as diplomatic agents are regarded as placed beyond the application of the territorial laws of the government to which the diplomatic agents are accredited. But this immunity of exterritoriality is not extended so as to protect a diplomatic agent or any one of his staff who is a subject or citizen or public servant of the nation in which he acts from the laws applicable to him as such subject or citizen or public servant; nor does it apply to one who appears as plaintiff in the local courts or submits to their jurisdiction willingly. Furthermore, one who commits a crime may be properly regarded as having divested himself thereby of his immunities, and may be reasonably subjected to the jurisdiction of the lower courts; the practice, however, is to deliver him over to his own government for judgment.

Exterritoriality.

50.

Diplomatic agents may not use their embassies or legations or residences as asylums for criminals who are not of their own staff; if they do, and such criminals are not surrendered when duly demanded, sufficient, but only sufficient, force may be employed to apprehend them. Any one, however, fleeing from mob violence may be granted temporary asylum. In some countries, owing to the insufficiency of the local government or civilization, custom permits diplomatic

Asylum.

agents to concede asylum to political refugees, but the practice is tolerated rather than sanctioned by international law, which does not advocate measures that may encourage conspiracies, promote rebellion, or cause international complications.

51.

Diplomatic agents are entitled to freedom of worship in their embassies or legations or residences provided they exercise it without offensive ostentation.

Freedom of worship.

52.

It is not usual to impose custom-house duties or taxes of any kind on the property of the chief, or acting-chief, diplomatic agent of a mission, unless the property is clearly unofficial. His staff are not entitled to claim a similar exemption, but in practice they are frequently favored with it, and, of course, it may be secured for them by agreement.

Duties and taxes.

53.

Diplomatic agents are not obliged to testify in any criminal or civil foreign court of the nation in which they act.

They need not testify.

54.

The immunities of diplomatic agents cannot be waived by them except with the permission of their government, for their immunities belong to their office, and not to them personally.

They can waive their immunities only by permission.

55.

The diplomatic agents which any two governments accredit to each other should be of the same class, and the equality of class should be maintained in subsequent appointments.

They should be of the same class at both courts.

56.

The local rules of official and social etiquette should be observed by a diplomatic agent when they are compatible with the dignity of his rank and with his duty to maintain the honor of his country.

Etiquette.

57.

Diplomatic agents act under either general or special instructions from their governments. When they act otherwise and to the prejudice of their government or to the friendly relations existing between their government and the government to which they are accredited, their presumption may be repudiated by their government.

They act under instructions.

58.

Private persons should address to their diplomatic agent or to their foreign office such communications as they desire to have presented to the government to which he is accredited. No claims may be presented unless they are based on some violation of international law.

Communications and claims of private persons addressed to diplomatic agents.

59.

The archives of an embassy or legation belong not to the diplomatic agent, but to his government, and he is not justified in keeping any copy of the records for his personal use or pleasure. His official correspondence is confidential, except where its publication is authorized by his government.

Archives and correspondence.

60.

A diplomatic agent should abstain from discussing partisan, political, or international questions, except in conformity with the instructions of their government.

They should avoid discussing public questions.

61.

A diplomatic agent may not without the permission of his government be the diplomatic agent of any other government.

Permission required to represent any other government.

62.

A diplomatic agent should exert his influence during a period of war or of grave disorder to protect the citizens or subjects of friendly nations and their property, if such persons have not at the time a diplomatic agent of their own to whom they can apply for protection. Furthermore, he may properly, during such a period, interpose his good offices even in behalf of natives of the country in which

Protection of subjects and citizens of other countries.

he acts, if they are threatened with, or subjected to, treatment inconsistent with the principles of humanity.

63.

Diplomatic agents in the uncivilized countries should secure proper protection for the subjects or citizens of their nation. In addition to the ordinary process they are entitled to use for the purpose, they are generally allowed by treaty to exercise in such countries jurisdiction over their fellow-citizens or fellow-subjects both in criminal and civil matters.

Judicial functions of diplomatic agents in uncivilized countries.

64.

An outgoing diplomatic agent should, if possible, continue to act until his successor arrives and enters upon the performance of his duties.

Should await arrival of successor.

65.

The mission of a diplomatic agent ends usually in one of the following ways: by transfer, promotion, resignation, the conclusion of his term of office, recall, expulsion, a serious and an unpunished wilful violation of his immunities, international unfriendliness, refusal to accredit to his government a diplomatic agent of his rank, or by the death of himself, or the monarch who accredits him, or the monarch to whom he is accredited.

How a diplomatic agent's mission is terminated.

66.

In the case of the absence or death of the diplomatic agent his duties pass to the secretary of the legation or embassy, whose title is then changed to chargé d'affaires *ad interim*, and he acts as such without special appointment, giving due notice of the change to the local foreign office and to his own government. While the diplomatic agent is present, the secretary is not recognized as authorized to act except under the supervision of the diplomatic agent. There may be one or more secretaries of embassy or legation, and they take precedence over all other officials connected with the diplomatic agent's staff.

Secretary of embassy or legation.

67.

Military and naval attachés are accredited by their government to the diplomatic agent, but are under orders from their army and navy department respectively, and report to them. They are accredited both for technical and general service, and are entitled to all the immunities.

Attachés.

68.

The office of diplomatic agent or of secretary of legation may be united either permanently or temporarily with that of consul (usually consul-general). The holder of the appointment may exercise all the powers and perform all the duties of his dual office, and is entitled to

Diplomatic agent or secretary of legation or consul, and vice versa.

the immunities of a diplomatic agent and to the privileges of a consul.

69.

Consular officers are the agents of the government of a recognized sovereign nation charged with the duties of protecting in foreign nations its subjects or citizens and its commercial interests.

Consular officers.

70.

They may be divided into five classes:

1. Consuls-General. They are charged with the duties of a consul in their own district and generally with supervisory jurisdiction over the other consuls of their government located in the other districts of the nation in which they act. Their supervising duties consist principally in seeing that the laws and instructions of their government are properly obeyed.

Classes.

2. Consuls. These exercise their functions in their own districts, or special section of their district, if it be divided into sections, and are charged with the supervision of their subordinates in the other sections of their district.

3. Vice-Consuls. These are either substitutes or subordinates. When they are substitutes, they act during the absence of the principal officers. When they are subordinates, they have special sections of their principal's district, and act permanently. In exceptional cases they have separate districts of their own, and differ from consuls only in title.

4. Deputy-Consuls. These are subordinates, and are appointed such in order that they may assist their principals permanently.

5. Consular Agents. These are subordinates, and, like subordinate vice-consuls, act in special sections of their principal's district, and render their accounts through him, and correspond through him with the government for which their principal acts. They generally rank with deputy-consuls.

71.

Commercial agents.

The consular officers called "commercial agents" have, in the service of the United States, the same powers and duties and rank as consuls; but in the service of Great Britain and other countries, they generally are the same as subordinate vice-consuls.

72.

How consular officers are appointed.

Consular officers are appointed by the government they are to serve (by the sovereign in monarchies, and in republics by the President, or by the President by and with the advice and consent of the Senate), or by an agent (the Minister of Foreign Affairs, a diplomatic agent, or a consul-general) duly authorized to appoint them. In the service of the United States, consuls-general and consuls are appointed by the President by and with the advice and consent of the Senate. Commercial agents are appointed by the President, as are also the thirteen consular clerks. All

other consular officers are appointed by the Secretary of State, but generally upon the nomination of the principal consular officer of the district or country in which they are to act. Temporary subordinate appointments may be made by a consul-general, or, if he is absent, by the diplomatic agent, when a consulate is deprived of both its consul and vice-consul.

73.

Commissions are issued by all governments to their consuls-general and consuls and by the United States government to commercial agents also, and they may be issued to vice-consuls. Certificates of appointment are issued to those who are not entitled to commissions. Both the commissions and certificates of appointment should state the title, duties, and district of the consular officers, and should authorize the consular officers to exercise jurisdiction over such places as are nearer to their districts than to the districts in the same nation of the other consular officers of the government they serve.

Commissions and certificates of appointment.

74.

The commissions or certificates of appointments should be forwarded by the appointing power to its diplomatic agent in the nation in which the consular officers are to act, and he should show the originals and furnish copies of them, if required, to the government of such nation, and ask for its official recog-

Exequaturs.

nition of the consular officers. This recognition, when granted, is evidenced by an instrument called an exequatur, or by a less formal instrument in the nature of an exequatur, which authorizes the consular officer to whom it is issued to enter upon the performance of his duties, and which directs the local authorities of the district in which he acts to grant him the rights and privileges to which he is entitled. It may be provided in these instruments of recognition that if the consular officer engages in business or trade he is subject as such business man or trader to the laws of the country the same as any other foreigner is. Usually exequaturs issue for commissions, and certificates in the nature of exequaturs for certificates of appointment. The original commissions or certificates should be sent with the documents of recognition to the consular officers, who are entitled to retain them as their personal property. For just cause exequaturs and certificates in the nature thereof may be refused, or, if granted, may be subsequently revoked. Before they are issued the consular officers may, if it is desirable, apply to the local authorities of their district for temporary recognition, so as to permit them to act at once; and in case of refusal, they may make a similar application to the local government through their diplomatic agent. In case there is no such diplomatic agent, the consul-general in all these matters should act, and if there is no consul-general, the consular officer may be instructed to deal directly with the Minister of Foreign Affairs of the government of the nation in which he is to act.

75.

Consular officers in the civilized countries are not entitled to the immunities of diplomatic agents; but they have the privileges that are necessary for them in order to discharge their duties so long as they perform them properly and do not violate the laws. Such privileges are usually deemed to be: protection of their persons; inviolability of the archives and property of their office; permission to display their flag and shield; and exemption from military and jury duty, and from having soldiers quartered in their houses. Furthermore, it is usual to exempt them from the payment of a personal tax. They may furthermore claim all other privileges granted by treaty or by local custom to them or to the consular officers of other nations, provided such other privileges have not been withdrawn by an official notice, and provided the treaty between the government they serve and the government of the nation in which they act contains the most-favored-nation clause. Consular officers of the lower grades are not always favored to the same extent as are those of the higher grades, and those of the higher grades generally enjoy fewer privileges if they are natives of the country in which they act, and if they are engaged in business or trade, than if they are not, unless no restriction is placed on their privileges in their recognition papers. If the privileges to which they are clearly entitled are wilfully and seriously violated or withheld, they may c

Privileges in civilized countries.

hold relations with the local authorities, and they should complain to the government they serve and to its diplomatic agent.

76.

Consular officers are not received by the local authorities of their district with any ceremonials, and are not entitled to any. The only precedence they have is among themselves and the officers of the army and navy of the nation they serve. The various governments have rules regarding the manner their consular officers should be honored by their men-of-war entering the ports where the consular officers serve, and it is usually, if not always, provided that they shall receive a salute of a certain number of guns if they are consular officers of the higher grades. The United States prescribes a salute for consular agents and also for consular clerks.

Ceremonials and precedence.

77.

Consular officers are subject to the civil and criminal laws of the civilized countries in which they act, and thus may be required to attend court as witnesses, and may be sued, arrested, imprisoned, and punished, unless, or except as, otherwise provided by the treaties that apply to them. Before prosecuting them criminally their exequaturs should be revoked.

Subject to the local laws.

78.

Consular officers should be protected by the government for which they act so long as they perform their duties faithfully and do not violate the laws. Insults wilfully directed against them, and studied and systematic encroachments on their rights, should not be tolerated.

Protected by their government.

79.

The usual duties of consular officers are to take oaths and acknowledgments; to legalize signatures; to issue invoice or other like certificates; to receive the protests of shipmasters and to keep ship's papers on deposit; to discharge, arrest, imprison, ship, protect, and relieve seamen; to issue bills of health; to take measures to save wrecked and stranded vessels and their cargoes; to administer the estates of deceased persons; to certify extradition papers; to issue certificates authenticating marriages, births, and deaths; to see that the citizens or subjects of the government for which they act secure their commercial rights and privileges; to keep record books; and to make reports on commerce and trade. Consular officers should not take part in the politics of the country in which they act, and should not, in their speeches or writings, discuss political matters. They should maintain friendly relations with the local authorities of their district, and duly observe the local requirements in matters official and social.

Their duties and obligations.

80.

Consular officers who receive commissions and exequaturs, and who are paid salaries by the government they serve, are usually not allowed to engage in business or trade.

Right to transact business and to trade.

81.

In revolutionary countries, the same rights that are given by usage to diplomatic agents to grant asylum to refugees are generally given to consular officers as well, and they should exercise such rights with the same degree of caution as diplomatic agents should.

Asylum and protection.

82.

In the uncivilized countries, consular officers possess substantially the same immunities as are conceded to diplomatic agents, but diplomatic agents in such countries, as elsewhere, take precedence over them.

Consular officers with diplomatic functions.

83.

The civilized nations have, as a rule, secured by treaty the right of establishing consular courts in the uncivilized countries, for the trial of civil and criminal cases in which the citizens or subjects of the nation which they serve, are interested, or of bringing such cases before a mixed court, or of having them tried according to equity in the presence of a consular officer or his duly authorized agent. These courts are usually of

Consular courts.

limited jurisdiction. The forms of procedure are those established by custom, but when defective they may be changed after the manner prescribed by the rules of the court. In the more important cases appeals generally may be taken to the diplomatic officer.

84.

A consular officer, if granted permission by the government which he serves, may also serve another government: in that event, he becomes responsible to such other government in so far as his acts for it are concerned, and to the same extent it becomes responsible for him.

Consular officers may serve other governments by permission.

85.

When a consular officer is relieved of his duties, either by the revocation of his exequatur or by his successor, he is no longer entitled to the privileges accorded him as consular officer in the nation in which he has acted.

Privileges cease when their duties end.

86.

Treaties are compacts made between two or more sovereign nations by their proper, recognized authorities or by their duly authorized agents.

Treaties.

87.

The essential difference between conventions and treaties is that the former are transitory in their nature and the latter are permanent.

Distinguished from conventions.

88.

From contracts.

Contracts may be made by a nation with private individuals of another nation, while treaties are not made with private individuals.

89.

From sponsions.

Sponsions differ from treaties in that they are made with apparent, but not with real, or sufficient, authority.

90.

From military or naval conventions in regard to capitulations, truces, and cartels.

Conventions made by generals or admirals or others in command in regard to capitulations, cartels for the exchange of prisoners, truces, and other war measures, are part of the official duties they are authorized to perform, their power to perform them being implied, while the power to make treaties is express.

91.

From protocols.

Protocols are the preliminary rough drafts of compacts; treaties are the final, finished forms.

92.

Who have treaty-making power in nations and tribes.

The treaty-making power in absolute monarchies is a prerogative of the crown. In constitutional monarchies and in republics it is given to the monarch and President alone, or is to be exercised by them with the consent and advice of others, generally of the legislative, or of a legislative, branch of the government. The treaty-making power in

tribes is usually vested in their chiefs. The American Indians are regarded as domestic dependent nations, and as such have been allowed to retain their power to make treaties.

93.

A treaty-making power has either limited or unlimited powers. When its powers are limited it must not exceed them; and when it has unlimited powers it must exercise them in such a way as not to ruin, destroy, or wantonly disgrace the nation; it may, however, go so far as to surrender part of its territory to another by way of indemnity for war. In all cases those that have the treaty-making power are bound, at least morally, to act in the interests of the nation they represent. **Limited or unlimited powers.**

94.

When a nation is forced by adverse circumstances to make a treaty that requires it to sacrifice great interests, important rights, or a part of its territory, it may not on that account set up afterwards the claim of duress or *læsio enormis*, and seek thereby to avoid its obligations. **Duress and læsio enormis.**

95.

Those that have the treaty-making power usually name and appoint public ministers or diplomatic agents. resi- dent or special, to negotiate the treaties they desire to make. **Negotiators.**

96.

Negotiators of treaties are furnished with full power and with special instructions in addition to their usual letter of credence. The term "full power" must be understood to mean, subject to acceptance in conformity with any restriction imposed on those that have the treaty-making power, in case such restriction is not (it commonly is) expressly stated in the full power. The special instructions should be carefully followed. They are usually secret. In case of great urgency a diplomatic agent may proceed to make a compact without special authority, but he should, if possible, insist that it be drawn up in the form of a protocol, and should state in it that it is subject to the action on it of the government for which he acts.

Full power and special instructions.

97.

Formerly all treaties were drawn up in Latin. Now any language may be selected by mutual consent, or the negotiators may have the treaty expressed in the languages of the respective sovereignties they represent, either in one document or in separate documents. When different languages are used in the same document they should be placed side by side, article for article, and the copy given to each negotiator should contain in the left-hand side of the page the language of the sovereignty he represents. Each copy thus given is deemed an original.

Languages used.

98.

Treaties may be oral or written, open or secret, but when oral they should be put into writing as soon as may be convenient. No special form is required. All that is necessary is that the negotiators should state the subject matter clearly and intelligibly, and in such a way as to show mutual consent and concurrence. Usually a treaty is engrossed, and begins with a statement in regard to what it is about, and then, after giving the names and titles of the negotiators, and declaring that their full powers have been exchanged and been found to be in due form, it presents the articles that have been agreed upon, and concludes with the names and seals of the negotiators, who are usually designated as "plenipotentiaries."

Form of treaties.

99.

Nations wishing to secure for themselves the privilege of being treated as the most favored nation (*gentis amicissimæ*) may grant and obtain that concession by treaty. The concession must be interpreted to refer only to gratuitous privileges and not to those granted for a valuable consideration. Such privileges as the latter should be conceded only when an equivalent consideration is offered. Examples of the most favored nation concession are the following:

Most-favored nation-clause.

"The United States of America and the Republic of New Granada, desiring to live in peace and harmony with

all the nations of the earth, by means of a policy frank and equally friendly with all, engage mutually not to grant any particular favor to other nations in respect of commerce and navigation, which shall not immediately become common to the other party, who shall enjoy the same freely, if the concession was freely made, or on allowing the same compensation, if the concession was conditional."

"The respective Consuls-General, Consuls, Vice-Consuls and Consular Agents, as likewise the Consular Chancellors, Secretaries, Clerks, or Attachés, shall enjoy in both countries [the United States and Italy] all the rights, prerogatives, immunities and privileges which, are or may hereafter be granted to the officers of the same grade, of the most favored nation."

This favored-nation concession has in view only existing nations and not those that may spring up in the future.

100.

Methods of signing: lot, alphabet, or alternat.

Priority of right to sign a treaty may be secured by the negotiator by lot, or he may agree to sign according to the first letter of the name of the sovereignty he represents in the French or any other alphabet. But the most approved method is the alternat, which gives each negotiator priority in the document which he is to retain.

101.

Ratification.

It is usually provided in the last article of treaties that they shall be duly ratified by the treaty-making powers of the nations the negotiators represent. The objects of ratification are to secure for the treaty careful consideration, the form of approval most binding on the nations, and the prevention of irregularities and supererogation on the part of the negotiators. In case there is no provision in the treaty regarding ratification, the promise to ratify made by the treaty-making powers in the full power of the negotiator may be avoided for just cause; as, for instance, if a promise were made in the full power given to a negotiator of the United States, and if no provision were made in the treaty regarding ratification, the promise might be avoided justly if the United States Senate refused to consent to the ratification, for the Constitution of the United States prescribes that treaties shall receive the consent of the Senate in order to be binding, and the other treaty-making powers are bound to know that fact, and to make no requirement of the United States inconsistent with it.

102.

Modification of treaties.

When a treaty is referred to those that have the ratifying power they may make changes in it, and if the changes are accepted they may ratify it as thus modified.

103.

A treaty, although it be legal and the law of the land and binding internationally, may require further legislation in order to make it operative, and such further legislation should not be withheld except for some extraordinary and justifiable reason. Thus if a treaty provides that a nation should pay an indemnity, its legislative body is morally and legally bound to furnish the money. But if a treaty flagitiously invades the prerogatives of the legislative branch of the government in such a way as virtually to destroy them, the legislative branch is not bound to take any step to render such treaty operative, even if the treaties of such nation are declared to be in its constitution (as are the treaties of the United States when duly made and ratified) the supreme law of the land. If the requisite additional legislation is not effected, the treaty is not operative municipally, and is, therefore, municipally abrogated.

When further legislation is required.

104.

Unless otherwise provided, a treaty is binding on the nations that are parties to it from the day it is signed by the negotiators, and the subsequent ratifications that are exchanged, are retroactive and approve both of the treaty and the date. But private individuals are not bound by a treaty until it is ratified and proclaimed, for until then they are not

When treaties become operative.

supposed to know its provisions. Furthermore, if additional legislation is required to make a treaty operative, it does not become so until such legislation has been effected, and not until then will the courts execute it.

105.

The construction and interpretation of treaties are matters often before the courts of the nations, and it is the duty of the nations to maintain courts that will enforce treaty obligations intelligently, impartially, and honestly. The main rule as to construction (the general signification and meaning) of a treaty is that it should be logical, legal, and liberal, while the principal rule as to its interpretation (explanation of its terms and phrases) is that it should be in accordance with reason and with the general spirit of the treaty.

Construction and interpretation.

106.

Treaties should not be construed, interpreted, nor enforced in conformity with the *cy-pres* doctrine, but with strict fidelity.

Cy-pres doctrine.

107.

When nations have made two or more treaties with each other, the latest treaty is the authoritative one in regard to such matters as it has in common with the treaty or treaties that preceded it.

Later treaties prevail over earlier.

108.

When a treaty-making power "adheres" to a treaty made between other powers, its adhesion, if mutually consented to, makes it a party to the treaty to the same degree and extent as is each of the other powers.

Adhesion.

109.

A nation may refuse to be bound by a treaty stipulating that it should perform an unlawful or immoral or a criminal act, and other nations may interfere to prevent it from being committed or may properly protest against it if it has already been committed.

Avoidance of treaties.

Furthermore, a treaty may not be considered binding if it is based upon impossibilities or fraud, or a mutual misunderstanding of the facts, or if the negotiator was compelled by force to execute it.

110.

As a rule, a nation is not relieved of the responsibilities or liabilities it has assumed in its treaties by the mere fact that its government has been changed by a revolution since the treaties were made and ratified.

Effect of revolution on treaties.

111.

Generally a treaty is abrogated by mutual consent, by its own terms, by violating or repudiating it, or by war. Treaties may not be considered violated or repudiated

because of an omission to perform an unimportant stipulation in them, especially if it is casual; nor does war, which, as a rule, abrogates all treaties made between the belligerents, affect at all, or otherwise than temporarily, such treaties as by their nature or own terms were evidently intended to be permanent. It is not unusual to abrogate treaties. The United States alone during their short existence have placed in their list of abrogated treaties fully fifty that were annulled either by their own terms or by notice given in accordance with the joint action of Congress.

Abrogation.

112.

Treaties should be made in good faith by nations, and in good faith they should maintain them, when proper or possible; as every nation in making them with another nation trusts to such other nation's honor to carry the provisions into effect as therein stipulated. Primarily, therefore, the enforcement of a treaty must rest in the mutual trust the nations have in each other's honor. Precautions are sometimes taken to secure the fulfilment of a treaty, such, for instance, as the occupation of a fortress or of ports belonging to the debtor nation, and, in exceptional cases, possession is taken of its custom-houses, and the duties collected are applied to the payment of the debt. When no such precautions are taken the nation whose interests are adversely affected by the violation of a treaty may seek redress

Enforcement of treaties.

by reclamation, or by referring the dispute to a third party for settlement, or may have recourse to war in order to enforce it. As a rule, treaties are not enforced against a nation that has lost its independence or that has changed its constitution so that its treaties are repugnant to the new constitution. Furthermore, treaties that are personal in their nature, such as those between monarch and monarch, may generally be justly terminated on the death of either.

113.

Kinds of treaties.

There is no restriction placed on the number of subjects that may be considered in a treaty or on the kinds of treaties that may be made, except that implied in the right of avoiding treaties, or the privilege of intervention to prevent their execution, for just cause. The most important kinds of treaties are those of Friendship and Alliance, Guaranty, Cession, Boundary, Commerce and Navigation, Reciprocity, Mediation, Arbitration, Establishing Protectorates, Peace, and those in regard to Trade-Marks, Extradition, and Naturalization.

114.

Friendship and alliance.

Friendship, or Amity, is often coupled with the other subjects of treaties; thus, Amity and Commerce; Peace and Amity; Peace, Friendship, and Navigation, or Friendship, Commerce, and Navigation; and the clause in which the stipulation as to Friendship, or Amity occurs, is to the effect that between the parties to

the treaty there shall be a firm, an inviolable, and a universal peace and a true and sincere friendship.

Alliances may be offensive or defensive or both, or may have for their object the maintenance of neutrality during the conflicts of other powers. An offensive alliance is made for the purpose of united aggression; a defensive alliance for the purpose of unitedly resisting aggression; and an offensive and a defensive alliance for both purposes. These alliances may be made so as to pledge either the entire resources of one or both of the allied powers, or only a stipulated number of its, or their, men or ships, or, in other words, a limited amount of help. Either power may refuse to be bound by the alliance if the aggression of its ally against third powers is unjust or if its ally's conduct has been such as to justify the agression of third powers, and stipulations to that effect are generally now embodied in these treaties. In cases of doubt the ally should have the benefit of the doubt.

115.

Guaranty.

Treaties of guaranty are undertakings of an independent party to come to the assistance of another power in case certain rights of such other power are violated or threatened with violation. Thus an independent party may guarantee another nation's independence and integrity, its constitution, its war debt, or any provision in a treaty to which such other nation is a party. Furthermore, nations may by treaty guarantee a

previous treaty, or may each guarantee the rights of all the other signatory powers of a treaty to which it is itself a party. In short, whatever right may belong to one nation may be guaranteed by another nation. By guaranty is meant assistance, and not necessarily fulfilment, for that would be surety.

116.

A treaty of cession is a compact transferring possessions from one sovereignty to another. It is usual in these treaties to describe the possessions and the title of the grantor; to state that they are ceded forever and in full sovereignty with all their rights and appurtenances; to make suitable provisions to protect the rights and privileges of the inhabitants of the ceded territory; to name the consideration and provide for its fulfilment; and to fix the date of transfer.

Cession.

117.

In treaties of boundary, commissioners may be appointed to represent each party, and it may be provided that they shall be sworn to decide the dispute impartially; that they shall meet at a place named; that they may adjourn to other places; that they shall declare under their hands and seals what the boundary is; that if they agree their decision shall be final; and that if they differ, their report and the arguments of each commissioner for maintaining his special

Boundary.

opinion shall all be referred to some friendly third power, whose decision shall be final. An intelligible description of the dispute should be included in the treaty, and provisions should be made for the compensation of the commissioners and of such secretaries and surveyors as they may be authorized to appoint. The decision may be made a part of the treaty and the date of the ratification fixed accordingly.

118.

Treaties of commerce and navigation generally provide that the citizens or subjects of the high contracting parties may enter all the ports and rivers and waters belonging to each other that are open to foreign commerce, and may visit the countries of each other, and reside there, and engage in trade as freely as may the natives, and enjoy the same rights and privileges and exemptions, provided they obey the laws. The right of trading along the coasts, from place to place, is, in its nature, a domestic privilege, and usually is not conceded to foreign ships. Special provisions may be made in these treaties in regard to tonnage and other duties, shipwrecks, the protection of each other's citizens or subjects, the privileges of consular officers, or to any other subject incident to commerce and navigation, either during times of war or peace.

Commerce and navigation.

119.

Reciprocity.

Treaties of reciprocity may provide for the admission, free or at an advantageous rate, of certain home-made or home-produced articles of one nation into the territory of another for and in consideration of the admittance under like terms of certain home-made or home-produced articles of such other nation into the territory of the first-named nation. It is usual in these treaties to make provisions in regard to transit duties, and the time when the treaties shall take effect and when they shall expire.

120.

Mediation.

Treaties of mediation are those that promise or favor the interposition of the good offices of a friendly power to prevent war, or to put a stop to it, between others. A treaty of this kind was made by France and Sweden, in 1648, in order to prevent the peace of Westphalia from being violated by the Germans or Austrians. Again, in the Treaty of Paris, 1856, a provision for mediation was made in case any of the signatory powers should have a misunderstanding with the Porte likely to lead to war. In 1862 an attempt was made by France to form an agreement with England and Russia to mediate between the North and South during the war of secession in the United States, but it was not successful, as the opportunity was not deemed favorable for taking such a step.

121.

Treaties of arbitration are made in regard to either claims or disputes, and they provide for a tribunal of arbitration; the manner of its appointment; the filling of vacancies caused by death or other incapacity to serve; the time when and the place where the arbitrators shall meet; how each party shall present its case; what expenses may be incurred and how defrayed; the time within which the decision shall be made; how it shall be made; how the award shall be paid; and when the treaty shall be ratified. Furthermore they may provide that the decision of the tribunal shall be final, and that all the claims incident to the controversy shall be deemed to be forever settled. Why a permanent tribunal is not established for the purpose of deciding all controversies between nations, is getting to be a question that civilization cannot answer; and it is to be hoped that the day will soon come when the right for the nations to appeal to arms to decide their disputes will be taken away from them just as it has been taken from private individuals.

Arbitration.

122.

Protectorates when established by compacts limit the sovereignty of the nations protected, and they become semi-sovereign nations. By compact also they may be relieved of protection, and may become full sovereignties. Thus Roumania, Servia,

Protectorates.

and Montenegro, formerly semi-sovereignties, were declared by the treaty of Berlin to be full sovereignties. This same treaty created Bulgaria, and made it semi-sovereign, by providing that it should have a prince elected by the people, a local government, and a national militia, but the prince thus elected must be confirmed by the Porte with the assent of the signatory parties to the treaty. The position of Egypt is peculiar. It is a province under the sovereignty of the Porte, but since 1881 it has been occupied by British troops, but, as Great Britain claims, not for the purpose of annexation or of establishing a protectorate, but only to preserve existing rights and interests. Such occupation of foreign territory seems to just avoid both annexation and establishing a protectorate, and to be a medium that is only more or less happy. The Porte practically consented to the occupation in the convention of 1885, but it was understood to be for temporary purposes only. Tunis was thus occupied in 1881 by the French, who just fifty years before that date secured possession of Algiers. In 1883, by a convention with the Bey, the French obtained the right of administering the affairs of Tunis, and have ever since continued to exercise that right. Tripoli, so far, has been allowed to remain under the sovereignty of Turkey, owing, perhaps, to the agreement of France and Great Britain to regard it as a part of the Turkish domains.

In other parts of Africa Great Britain, France, Ger-

many, Italy, and Portugal have each acquired a sphere of influence, and each seems intent on ultimately acquiring sovereign rights within its special sphere. Just now they are engaged in occupying the territories within their respective spheres. To facilitate this work chartered companies have been called into existence, such as the British South Africa Company, the Royal Niger Company, the British East Africa Company, the Royal Borneo Company, and the German East Africa Company. These companies are granted charters by their respective governments, which exercise over them sufficient control to regulate their policy, and which reserve to themselves the right to approve or to annul any treaty they may make with the natives in regard to protectorates or any other important matters.

In treaties establishing protectorates the stipulations may be general or special, or both, and may pertain to the external or internal affairs, or to both, of the protected nation. Protectorates are strong or weak according to the responsibilities and obligations assumed by the contracting parties; that is to say, according to the proportion of sovereignty the protected nation transfers to the protecting nation. A protectorate may be so weak as to amount practically to nothing more than a guaranty of the protected nation's independence; or it may be so strong as to take away all the protected nation's rights to control its external relations, commercial as well as diplomatic, and to administer its own internal affairs; and,

consequently, it may practically amount to, or easily result in, annexation. Some of the more important stipulations that may be put into this kind of treaty are those requiring ample protection for the protected nation against external and internal enemies and for its citizens or subjects, when abroad, by the diplomatic agents and consular officers of the protecting nation; those conceding to the protecting nation the right to keep a Governor and an administrative force, and to maintain adequate military forces in the protected nation, and to represent the protected nation in all its relations with other nations, and with their citizens or subjects, at home or abroad; and those relating to responsibility for the debts and obligations of the protected nation and to the right to raise loans. After a protectorate has been established third nations should be notified of its existence, its character, and the territory it covers; and they should not refuse to recognize it, nor should they attempt to destroy it, except for just and sufficient cause.

123.

Treaties of peace.

Treaties of peace are made between nations that have been at war and that have decided to resume relations of amity and friendly intercourse with one another. They are preliminary or definitive according to the kind of agreements or settlements they make. All questions in dispute between the parties, such as those of independence, boundaries, debts, and obliga-

tions, may be settled in these treaties, and they may revive and confirm or modify or abrogate former treaties, and may specify the new rights and obligations of the parties and may contain provisions covering all other matters affecting their relations or interests. These treaties should be understood to settle forever the special dispute that caused the war and should contain a clause to that effect. Provision should also be made in these treaties for the evacuation of territory occupied by the enemy, as otherwise he may hold it (*uti possidetis.*)

124.

In treaties in regard to trade-marks, the essential provision is that each of the signatory powers will give to the citizens or subjects of the other the same rights and privileges in regard to trade-marks and to trade-labels as it gives to its own citizens or subjects, provided they fulfil its laws and regulations in regard to trade-marks and trade-labels.

Trade-marks.

125.

Treaties of extradition provide for the surrender of persons who have been charged either as principals or as accessories with certain crimes or offences. After specifying the crimes or offences, they usually provide that any person delivered up by one of the parties to the other shall not be tried or punished for any crime or offence not specified in the treaty; that per-

Extradition.

sons may not be extradited for political offences; that neither party shall be bound to deliver up its own citizens or subjects; that those whose surrender is claimed, if under arrest, may not be extradited until they have been acquitted or punished; that the requisitions for surrender shall be made by the respective diplomatic agents of each party or, in case of their absence, by the principal consular officer; that a duly authenticated copy of the sentence, and attestation of the official character of the judge by the proper executive authority, and attestation of the official character of such executive authority by the diplomatic agent or consul of the party that is called upon to grant the extradition, shall accompany the requisition; or that, if there has been no sentence passed, a duly authenticated copy of the warrant of arrest and of the depositions upon which the warrant was issued, shall accompany the requisition, and that a warrant for the arrest of the fugitive shall then be issued by the proper executive authority in order that he may be examined by the proper judicial authority, and may be surrendered, if liable under the treaty to be extradited.

126.

Naturalization.

Treaties of naturalization regulate the citizenship of persons who emigrate from one country to another and change their allegiance, by providing that such persons are to be considered citizens or subjects of the country that naturalizes them. Stipu-

lation may be made in these treaties as to the number of years such persons must reside in the adopted country before they become naturalized, and as to their liability, if they return to the land of their nativity, for crimes or offences committed, before their emigration, including desertion from the army or evasion of service when they are drafted or when the reserve forces to which they belong are called out; and provisions may be made that they shall only be tried for such crimes or offences within the time limited by the law of their native land for the commencement of such trials, and that they may be restored to citizenship in their native land, if it be their desire, on such conditions as the government of their native land may think proper.

127.

Right of expatriation.

The civilized nations have, as a rule, recognized by their naturalization treaties with one another the right of their citizens or subjects to expatriate themselves, and have thus ceased to maintain the doctrine of perpetual allegiance. But as each sovereignty may make its own laws, it may forbid the immigration into its territory of paupers or of any other objectionable class or race of persons.

128.

Persons expatriate themselves who leave their country when they have the right to do so and change their allegiance by becoming citizens or subjects of another nation in accordance with the law of naturalization of such other country.

What constitutes expatriation.

Those that simply go to another country to reside do not expatriate themselves by remaining abroad, however long may be the time, provided they maintain their allegiance, and show no intention by their acts of divesting themselves thereof. If, however, they with their families remain many years abroad and have all their property abroad and engage in business and show no intention of returning, the government of their native land may refuse to accord them protection on the ground that they have ceased to perform the duties of citizenship in return for which its protection is given. Still such persons are not expatriated simply by the refusal of such government to protect them. If, as a matter of fact, they have not expatriated themselves, they may always return home and resume their duties as citizens, and thus re-establish their right to protection.

129.

The question as to the right persons may have to the protection of the government to which they claim to owe allegiance arises abroad most frequently when they seek to obtain passports from the

Passports.

diplomatic or consular officers of such government. Passports are documents that furnish *prima facie* evidence of citizenship and of right to the protection of the government that issues them through its duly authorized officials at home and abroad. Naturalized citizens or subjects may have the same kind of passports as native citizens or subjects, and they are entitled to the same degree of protection; they may, however, be required, in case they return to their native land and reside there for many years, to furnish unusually clear proof, if they apply for passports, that they have not renounced the citizenship they acquired by naturalization. The protection of a government must be sought and given in good faith: otherwise persons may easily avoid performing duties both to their native land and to the land of their adoption. Passports may be made good for an indefinite period or for a fixed time. Those of the United States are good for two years, and after that time they may not be visaed or verified.

130.

Private international law.

The right of persons to emigrate from their country and to reside abroad has been so largely taken advantage of during the period of the developement of international law that the nations have felt obliged, both out of comity and for the sake of convenience, to establish certain principles to govern them in reconciling the conflict of one another's laws in

regard to citizenship, minority, marriage, inheritance from or by aliens, extradition, and other subjects concerning the person, property, or acts of the individual. These principles form what is called private international law, which differs from international law in that it concerns itself with the relations of individuals and not of nations, and from municipal law in that it is not exclusively domestic or national but international. What each nation's conception is of private international law may be found in its constitution, treaties, and statutes, and in the powers vested in its courts.

131.

Privileges of aliens.

Every nation grants privileges to the aliens it admits into its territories. In the first place it is bound to give their persons the same protection against assault and violence that it gives the persons of its own citizens or subjects, and in the next place it is bound to protect their property. Humanity, furthermore, compels it to receive and treat kindly even persons of classes or races it does not ordinarily admit within its territories if they are brought there by shipwreck or other unavoidable misfortune, but it need not necessarily give such persons its hospitality for an unlimited time. The most conspicuous privilege that a nation concedes to aliens is that of exterritoriality, but that is conceded only to sovereigns and their suites, diplomatic agents and their staffs, officers and sailors on

men-of-war, and military forces. The tendency of the nations is now to remove the disabilities under which aliens formerly labored, and to grant to them the same commercial rights and privileges that are enjoyed by natives. Rather more reluctance is shown in regard to putting them on an equal footing with natives as to their capacity to hold lands, or to take them by descent, but generally they are permitted to purchase lands and to sell them. Such countries, however, as do not permit them to hold lands, have, as a rule, expressed a willingness to do so, provided that the nation to which the alien belongs will grant their citizens or subjects the same privilege. In the United States, where each State legislates on the matter, a majority of the States allow aliens to hold lands the same as may natives, while the minority require that the alien should be a resident and should take the oath of allegiance, or should declare his intention of becoming a naturalized citizen. Personal property aliens may inherit and alienate, and they may make use of the courts to protect their rights when friendly relations exist between their government and the government of the nation in which they reside. Exemption from military and jury duty is ordinarily granted to aliens. The most unquestionable right of aliens is that of departing from the territory of the nation they have been visiting, provided they have not offended its laws.

132.

Duties.

Aliens, as a rule, are bound, to the same extent as natives are, to know and to respect the laws and obligations of the nation that admits them. They owe local allegiance to its government so long as they reside within its territory, and the courts may punish them to the same extent as they may punish natives for offences against its laws. Unless exempted by treaty, they must, while domiciled in a foreign country, pay such taxes as are duly levied in a uniform manner when required to pay them, and they must perform such exceptional military, police, or other duties as they may properly and legally be called upon to perform.

133.

Liability for acts of aliens.

Aliens are liable for all their independent acts, and their government cannot be held accountable for them; but it can be held accountable for any of their acts done under its orders; so also the government of the nation in which they reside is responsible for such of their illegal acts against other sovereignties as it could have prevented by exercising due diligence.

134.

Expulsion of aliens.

The right of a nation to expel from its territory objectionable aliens is incontestable, but their government may demand redress if they are expelled wrongfully or with undue severity.

135.

Aliens may always be protected by their government when the rights or privileges to which they are entitled by treaty or international law are violated.

Protection of aliens by their government.

136.

The wife of an alien is also an alien, and the children who were born before their immigration into the country in which they have come to reside, are aliens as well; but if born afterwards, they may be regarded by the native country of their father, provided he has always retained his original allegiance, as its citizens or subjects, and also by the country in which they are born, as its citizens or subjects. Thus, if a child is born to British subjects residing in the United States, each country recognizes him as entitled to its citizenship. If, however, the child goes to Great Britain, and remains there permanently, he loses his American citizenship; but if he comes back, he may claim and be allowed recognition as a citizen of the United States when he reaches the age of twenty-one. By the British law a woman subject loses her British nationality by marrying an alien. The law of the United States, on the other hand, while it provides that an alien woman on her marriage with an American citizen becomes also an American citizen, does not expressly state that a native woman loses the rights of citizenship by marrying an alien. In most of the European

Wife and children of aliens.

countries a woman whose nationality has been changed by marriage, may, if she becomes a widow, resume her maiden nationality, provided she returns to her native land.

137.

Naturalization.

Each nation has the right to make its own naturalization laws, and it is not bound in naturalizing its aliens to obtain the consent of their governments. It is advisable, however, for the nations to make naturalization treaties with one another in case they have differences in their laws that cause irritation or disagreeable complications. The essential characteristic of naturalization is that it changes the allegiance of the alien, and secures it for the nation that naturalizes him. Usually a fixed period of residence antedating the act of naturalization is prescribed by every nation. By the law of the United States aliens must have resided therein five years before they are admitted to citizenship; but if they are twenty-one years of age and upwards, and have enlisted in either the regular or the volunteer forces of the United States, and have been honorably discharged, and have resided more than one year within the United States, they are entitled to petition for immediate admittance to citizenship, as are also foreign seamen after they have served three years on a United States merchant vessel; and an exception is also made in favor of the widow and children of an alien who has duly declared his

intention to become a citizen, but who dies before he is actually naturalized: the United States regard them as citizens, and they are entitled to all rights and privileges as such on taking the oath of allegiance. Except as thus provided, applicants for admission to citizenship are required to declare on oath before a circuit or district court of the United States, or a district or supreme court of the territories, or a court of record of any of the States having common-law jurisdiction, and a seal and a clerk, two years at least prior to their admission, that it is truly their intention to become citizens of the United States, and to renounce forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly to the prince, potentate, state, or sovereignty of which they may be at the time citizens or subjects. Furthermore, at the time when an alien is admitted to citizenship, he must declare on oath before some one of the courts above specified that he will support the Constitution of the United States, and that he renounces all foreign allegiance in the manner just stated; and he must prove to the satisfaction of the court, but not on his own oath alone, that he has resided five years in the United States and at least one of the five in the State or territory where such court is held, and that during that time he has behaved as a man of good moral character. The proceedings must be duly recorded by the clerk of the court. By the law of Great Britain the applicant is required to furnish evidence to one of the principal secretaries of

state that he has resided in Great Britain or has been in the service of the crown for a term of not less than five years, and of his intention to continue to reside there or to serve the crown; and such secretary of state may, with or without giving any reason, grant or refuse the application, whichever he thinks most conducive to the public good, and no appeal may be from his decision. If he grants it, the oath of allegiance must be taken before the certificate of naturalization is valid. An alien thus naturalized in Great Britain has all the rights and privileges of a native subject, except that Great Britain will not consider him a British subject when within the limits of the foreign state of which he was a subject previously to obtaining his certificate of naturalization, unless he has ceased to be a subject of that state in pursuance of the laws thereof or of a treaty to that effect.

138.

Declaration of intention.

An alien's declaration of intention to become naturalized does not secure citizenship for him, and does not entitle him, unless otherwise provided by treaty, to the protection of the nation that has granted him a certificate setting forth the fact that he has declared his intention of becoming one of its citizens or subjects, but its diplomatic agents may certify to the genuineness of the certificate, and would be justified in interposing their good offices in his behalf especially in uncivilized countries, but they may not give him a

passport nor the protection papers issued to citizens or subjects in uncivilized countries.

139.

When proof cannot be adduced by one who claims to have been duly naturalized, he may be presumed to be an alien. The usual evidence is a certificate of naturalization under the hand and seal of the court or official authorized to issue it, and its genuineness may be ascertained by referring to the record kept by such court or official. Like passports, certificates of naturalization should be received as *prima facie* evidence of the facts they recite. They are, however, impeachable for fraud.

Evidence of naturalization.

140.

When a sovereignty obtains territory by treaty, annexation, or revolution, the native-born inhabitants of such territory, if they remain, become either at once or at some fixed time thereafter citizens or subjects of such sovereignty, while those that depart may adhere to their old allegiance, and aliens who had been naturalized before the transfer may be released from citizenship and returned to their status as aliens. When Louisiana and Florida were ceded to the United States, it was provided in each of the treaties that the inhabitants should be admitted as soon as possible to the enjoyment of all the rights and privileges of citizens of the United States. When Texas

By treaty, annexation, or revolution.

was annexed, Congress provided that when it became a State its citizens should be deemed citizens of the United States. In the case of the American revolution, Great Britain held that those of her former subjects who continued to live in the United States after the treaty of peace in 1783 ceased to be British subjects, while the United States held that those who had adhered to their allegiance to Great Britain after the declaration of independence in 1776, and had withdrawn from the United States, could not be regarded as ever having been citizens of the United States. According to the British view the existence of the United States as a sovereignty dates from 1783, but according to the American view it dates from 1776.

141.

Wife and children of naturalized citizens or subjects.

The wife and the minor children of an alien who becomes naturalized partake of his new nationality, and are considered citizens or subjects of his adopted country, and this is true even if the marriage occurs abroad and if the children are born abroad, either before or after his naturalization. If he returns to his native country and resumes his original allegiance, the wife's nationality follows his, but the children may generally elect on reaching their majority to which country they will give their allegiance. According to the law of the United States, citizenship does not descend to children whose fathers

never resided in the United States. So if a child of a citizen of the United States is born abroad, and if such child never resides in the United States, his children are not citizens thereof. Furthermore, the United States do not consider as citizens thereof children born abroad of persons who were formerly citizens of the United States, but who are citizens or subjects of another country at the time of the birth of the children. Great Britain gives its citizenship not only to the children born abroad of a subject, but also to his grandchildren.

142.

Protection of citizens or subjects.

Every nation is justified in interposing its protection when its citizens or subjects, native or naturalized, are deprived by another nation of the rights or privileges which it has secured for them by treaty, or which are given to them by international law. Such rights and privileges may not be derogated from by the municipal law of such other nation. If its citizens or subjects are unjustly imprisoned, it may demand their release and suitable pecuniary damages may be claimed. It may also seek redress for the unwarranted expulsion of its citizens or subjects from another nation, or for any unmerited insult or indignity offered them by the authorities of another nation, or for the refusal of another nation to do them justice in its courts. Usually diplomatic agents and consular officers are not authorized to use the funds of the government for which they act in

relieving the distress of its destitute citizens or subjects, or in sending them home. The government of the United States makes an exception in favor of its merchant marine seamen, and authorizes its consular officers to furnish them, if destitute, with food, clothing, and lodging, and to provide them with passage to some home port; and other governments favor their seamen in the same manner.

143.

Domicile.

One's domicile is the place in which one resides with the intention of remaining there indefinitely and of making it one's home or abode. The domicile of a child, if legitimate, is that of the father; but if illegitimate, it is that of the mother. A wife's domicile is that of her husband, unless they have separated with the idea of living permanently apart, in which case she may acquire a new domicile for herself and for such of their children as she may have rightly taken with her. One's domicile is not changed, as one's residence is, by occasional absences, or a prolonged stay elsewhere, if it is always one's present intention to return to it and not to acquire any other domicile. But if one of full age leaves one's domicile with the intention of acquiring another, the change may be considered to be effected when one is settled, *animo manendi*, in the new place. Furthermore, a new domicile may be acquired by one who settles in a new place for an indefinite period with the intention of

returning ultimately, *animo revertendi*, to one's old domicile. Thus those that go to a foreign country, and settle there for an indefinite number of years with the intention of returning late in life to their native land, may be considered to have acquired a new domicile, even if they do not become naturalized citizens or subjects of such foreign country. If after a time they leave their domicile in such foreign country with the intention of never going back to it, they regain their old and original domicile and retain it, unless they proceed to some other foreign country and therein establish a new domicile as before. When one acquires a domicile in a foreign country one acquires with it the national character of that country, and retains it as long as one retains one's domicile therein. Each nation, consequently, gives its national character to three classes of persons, its native-born citizens or subjects, its naturalized citizens or subjects, and persons that have their domicile therein; and all three classes are entitled to claim the protection of the nation both at home and abroad, and international law gives them the same nationality. The duties of the three classes are in most respects identical during both war and peace, for they all owe allegiance to the government, and must respect its laws civil and criminal, bear their share of taxation and of the misfortunes and dangers consequent on war and other public calamities. The fact of one's having a domicile in a particular place is to be determined by ascertaining one's intention, which may be conclusively or presumptively

proved by the declarations one has made and the peculiar circumstances in each case. In uncivilized countries foreigners rarely obtain a domicile, but they are entitled to claim the nationality of the local consulate which takes them under its protection.

144.

Lex domicilii.

The law of the place where the domicile is situated is called the *lex domicilii*. By this law one's civil status and personal capacity are determined. Thus when questions arise as to one's citizenship, legitimacy, minority, or majority, idiocy or lunacy, capacity to marry or to make contracts, divorce or bankruptcy, they are to be generally settled according to the law of one's domicile. When the *lex domicilii* is properly applied to such personal questions, it is valid not only at the place of domicile but everywhere, as it is the rule of the nations to accept it, out of comity and for the sake of convenience, unless it conflicts with the letter or spirit of their laws in regard to the freedom of conscience, slavery, polygamy, or is injurious to their system of government. Hence, with those exceptions, one is constantly accompanied by one's *lex domicilii* both at home and abroad until one exchanges it for another by acquiring a new domicile, as for instance by naturalization. According to this rule, a man who has attained the age of majority fixed by his *lex domicilii* may make contracts that will be upheld in a foreign country, even if by the laws of that country he

would be a minor and incapable of making contracts; and, again, a married woman who is domiciled in a country that permits its married women to perform independent legal acts, will be allowed to perform them in another country that does not grant to its married women that right. Furthermore, the *lex domicilii* is frequently applicable to contracts made with foreigners and to the disposition of personal property.

145.

Personal property.

Personal property is regarded as following its owner: *mobilia ossibus inhærent, personam sequuntur.* If, therefore, it be situated in different places, it may still be disposed of by the owner according to the law of his domicile either by will or by a general assignment. In the absence of a rule to the contrary, a will duly made and executed in compliance with the requirements of the law of one's present domicile is not invalidated by a subsequent change of domicile. The transfer by sale or otherwise of particular articles, or chattels, is governed by the law of the place, the *lex loci*, where the transfer was made: *locus regit actum.* Wills or assignments of personal property duly executed abroad according to the requirements either of one's domicile or of the law of the place, the *lex loci*, in which they are thus executed, are generally as valid as if executed in the place of one's domicile, and this is also true as regards the validity of any kind of instrument pertaining to personal property.

When questions arise in regard to personal property transferred by marriage settlements, they are to be determined, unless a contrary intention is duly expressed, by the law of the matrimonial domicile, which is the first joint domicile acquired by husband and wife.

146.

Real property.

The law that governs real property is the law of the place where it is situated: *lex loci rei sitæ*. Hence transfers of real property must be executed with the formalities prescribed by that law, and according to that same law all questions are to be determined as to the tenure, transfer, and testamentary disposition of it. Furthermore by the *lex loci rei sitæ* the question is to be decided as to whether property claimed to be real property is, or is not, real property.

147.

Contracts.

As a rule, if contracts are valid in the place where they are made they are valid everywhere. The exceptions to this rule are generally those that include infractions of such laws of another nation as it considers it must enforce regardless of the question of comity, as, for instance, laws affecting the public health or its jurisdiction over real property situated within its territory. When a contract is to be executed in a foreign country, the law of such foreign country, the *lex fori*, regulates the proceedings, while the law of the place

where the contract was made, the *lex loci contractûs*, must be looked to in order to decide whether the contract was drawn up in due form, and to determine what interpretation and force to give to it. The question as to the capacity of the parties to the contract to make it must be referred to their *lex domicilii* and decided in conformity therewith.

148.

A certificate of discharge given to a bankrupt in the place where he and his creditors are domiciled, discharges him everywhere, and the bankrupt's personal property situated abroad is distributed according to the direction of the tribunal that granted the certificate of discharge, in the absence of a law to the contrary of the foreign nation in which the personal property is situated. This certificate of discharge, however, is not sufficient to discharge the bankrupt from his liabilities to foreigners domiciled in foreign countries.

Bankruptcy.

149.

The general rule in regard to marriage is that its validity is to be determined by the law of the place where it was celebrated; but every nation may regard as invalid a marriage celebrated abroad by its domiciled citizens or subjects, if they are prohibited from being married within its territory by its laws. Thus if (as in France) the law of the country requires its citizens or subjects to be of the age it fixes as the age of consent

Marriage.

before marrying, a marriage contracted by one of its citizens or subjects in contravention of that law may be held void by its tribunals. So Mormon marriages and a marriage celebrated between a man and his deceased wife's sister, are not recognized as valid in England if the parties are domiciled in England, as such marriages are there prohibited by law. The English law furthermore, in order to put a stop to evasive marriages in Scotland, requires that one of the parties to a Scotch marriage must have had his or her usual place of residence, or must have lived, in Scotland twenty-one days next preceding such marriage. The essential requirements of the *lex domicilii* must, therefore, be observed, otherwise the marriage, so far as the country of domicile is concerned, may be void; although valid by the *lex loci contractûs*. In the United States each State has its own marriage laws, while Congress legislates only for the District of Columbia and the territories in regard to marriages. But the general rule of the United States is that the validity of a marriage is to be tested by the law of the place where it was celebrated, and that if valid there it is valid everywhere. The Government of the United States does not permit its diplomatic agents or consular officers to perform the ceremony of marriage, but it authorizes its diplomatic agents to permit the ceremony to take place in their embassies or legations, provided the parties to the marriage may lawfully marry according to the laws of the country in which the embassy or legation is situated, and

provided proper steps have been taken to enable the marriage ceremony to be legally performed according to the laws of such country. Under the same conditions its consulates may be used by persons wishing to be married. Its diplomatic agents are not authorized to issue certificates of marriage, but by the act of Congress of June 22, 1860, it is provided that the United States will recognize, as valid, marriages celebrated in the presence of any consular officers in a foreign country, between persons who would be authorized to marry if residing in the District of Columbia, and that such consular officers shall in all cases give to the parties married before them a certificate of marriage. The ceremony may take place anywhere in the consular district, and the consul may attend if requested, but he may not, as has already been said, perform the ceremony. There is, however, no law of the United States prohibiting the States from passing separate laws authorizing diplomatic agents and consular officers to perform the ceremony of marriage, and, indeed, Massachusetts has passed a law to that effect. The other nations have their own special laws directing or forbidding its diplomatic agents and consular officers to perform the ceremony. Great Britain authorizes them to perform the ceremony by issuing to them a warrant to perform it, and marriages thus solemnized are as valid as if celebrated in Great Britain, provided the law of the place where the marriage is celebrated does not forbid them to perform the ceremony, in which case a warrant would not be issued to

them by Great Britain. As regards the form of solemnizing a marriage, it should be that prescribed by the law of the place in which it is celebrated, except in uncivilized countries as to such particulars as are offensive; or by the law of the domicile when that is allowed to apply by the local laws.

150.

Divorce.

A divorce duly obtained in a tribunal of the place in which the parties are domiciled is indisputably valid everywhere, provided their domicile is *bona fide*, and not acquired simply with the object in view of securing a divorce. Divorces obtained disingenuously in domiciles acquired for the purpose of evading compliance with the law of what has been the domicile of both or of one of the parties, may or may not be sustained, according to the rules governing the tribunal before which the validity of the divorce is brought to be tested. While the parties divorced continue to be domiciled in the place where the divorce was obtained, they are bound to respect any restriction placed on them both, or on either of them, in regard to remarriage; but if either of them acquires a new domicile, the right of that one to remarry is to be determined by the law of the new domicile. Generally such restrictions do not operate after one acquires a new domicile, and one is free to marry again. In most nations there is a national divorce law, but in the United States each State makes its own laws on the subject.

151.

Final judgments of foreign tribunals in personal actions are generally accepted everywhere as at least *prima facie* evidence that such actions have been duly tried and decided, and in some countries such final judgments are held to be definitive when not impeachable for injustice, fraud, or irregularity. It is the practice of the United States and England thus to hold them (and it should be the practice of all nations) and to render new judgments providing for the execution of such final foreign judgments. The Constitution of the United States determines the duty of the States among themselves in regard to this subject by providing that full faith and credit should be given in each State to the public acts, records, and judicial proceedings of every other State; and by the act of Congress of May 26, 1790, a judgment duly rendered in one State is conclusive as to the merits of the matter adjudicated upon in every other.

Acceptance of foreign judgments.

152.

Vessels in the public service of a foreign sovereignty entering friendly ports, although bound to obey the local health laws and port regulations, are exempt from the jurisdiction of the local courts, and so are the cargoes of such vessels, and also the supplies and property of the armed forces of a foreign sovereignty admitted to the privilege of passing through

Jurisdiction over foreign nation's property.

friendly territory. If, however, the foreign sovereignty makes use of such local courts of a friendly power, it must submit to their rules of procedure and jurisdiction. Instead of proceeding directly against the public or privileged property of a foreign sovereignty, the proper way is to institute diplomatic negotiations in order to secure redress or compensation for injuries or damages. The immunity of exterritoriality may, however, be withdrawn if it is grossly abused, and it does not apply to merchant ships, prize ships, or to property acquired in violation of the neutrality laws of friendly nations.

153.

Jurisdiction of courts over criminals.

A nation besides having jurisdiction over crimes and offences committed within its territory and on its war and merchant ships on the high seas, and on its war vessels in foreign ports, may punish its citizens or subjects for crimes and offences committed in foreign countries, and may apprehend pirates on the high seas and try them in its courts and punish them.

154.

Piracy.

Piracy is robbery committed on the sea or on excursions therefrom by persons who are not duly commissioned to carry on warfare nor duly authorized to appropriate the property of others. Thus persons who without a lawful commission make use

of a private ship for depredatory purposes are pirates. So rebels who have not been recognized as belligerents, may, even if they have commissions from their leaders, be treated as pirates by the sovereignty against which they act on the sea, as they have not due authority to carry on warfare, and they may also be treated as pirates by other sovereignties in case of aggression directed at sea against their property or dignity. Furthermore, if two powers are at war, persons who take sea-commissions from each of the two, and plunder or rob the vessels or property of either, are pirates, for they are not duly but fraudulently commissioned. The African slave trade has been declared by the municipal laws of many nations to be piratical, but it is not so by international law. Every nation may make its own laws about piracy, but they are only municipal laws, and as such are operative only within its own territory and on its own ships. The slave trade is now practically prohibited by international law, as all of the greater nations have agreed to forbid it, and punish it when they can.

155.

A nation may consent or refuse to surrender a political or criminal fugitive from another nation in the absence of an operative treaty applicable to the fugitive. **Extradition.** Generally political fugitives are not surrendered, and it is especially provided in most treaties that they shall not be. The crimes for which persons are

extradited include such as those of murder, rape, piracy, mutiny, arson, forgery, burglary, robbery, embezzlement, and kidnapping. As different nations have different definitions of crimes, clauses are frequently put into treaties giving the definition of each crime therein specified: thus, burglary, defined to be the act of breaking and entering by night into the house of another with the intent to commit felony; robbery, defined to be the act of feloniously and forcibly taking from the person of another money or goods by violence or putting him in fear; and forgery, defined to be the utterance of forged papers, and also the counterfeiting of public, sovereign, or governmental acts: or a provision is inserted in the treaty to the effect that the fugitive shall not be surrendered by either country unless its laws would justify his arrest and trial if the crime were committed within its territory. Generally the nations will not agree to surrender their own citizens or subjects for crimes committed abroad. This refusal may do no harm to the cause of justice if a nation thus refusing has laws to cover the special crime committed abroad; but if the nation be one wherein the common law prevails, the criminal may escape being punished altogether, and this has actually happened in England, as the English common-law crimes are local, and only such crimes, committed by Englishmen abroad, can be punished in England as may be defined as treason, bigamy, or homicide. The Constitution of the United States does not refer to the extradition of fugitives from

other nations, but it provides that the States shall surrender to one another on the demand of their executive authorities persons described as fleeing from justice and charged with treason, felony, or other crime. The United States, although regarding crimes and offences as local, have not adopted the policy of surrendering their citizens to foreign nations, but they are, as a rule, willing to do so if such other nations will stipulate to surrender their citizens or subjects to them. Unless an express reservation is made in treaties to the effect that the citizens or subjects of neither country shall be surrendered to the other, the general language of the treaties must be interpreted as including such citizens or subjects among those whom each party is bound to surrender. In some of their treaties with other powers the United States have this reservation clause, but in others they have not. In the treaty of 1842, made between the United States and Great Britain, the words *all persons* are used, and they are held to include the subjects of Great Britain and the citizens of the United States. Great Britain has even gone so far as to stipulate in her treaties with Switzerland and Spain that she will surrender her subjects to them but does not consider them bound to deliver up their subjects to her. As a matter of convenience it is doubtless better that criminals should be tried at the place where they committed their crimes and where the witnesses reside; but due care should be taken by the more humane and just nations not to surrender their subjects

or citizens to be tried in countries where criminals are not properly cared for, and are denied the right to a speedy and public trial impartially conducted. Another restriction frequently inserted in treaties (but it should not be necessary to put it in them) is that persons extradited can be tried only for the crimes described in the requisition for surrender, and need be surrendered only for the crimes specified in the treaty that applies to such persons. One of the objects of this restriction is to prevent persons from being tried for political offences after they have been surrendered for some other cause. If it is desired to punish a criminal for an offence other than that described in the requisition, a new requisition may be made out when the criminal returns to the country that previously surrendered him, and he may then be apprehended again, and extradited for the newly described offence; or he may be arrested and tried if he does not avail himself of the opportunity to return to such country within a reasonable time after being released. When the fugitive whose extradition is requested is a citizen or subject of a third nation, the consent of such third nation may or may not, in the absence of a binding treaty-stipulation, be obtained by the nation that is called upon to surrender him. Requisitions must emanate from the government of the nation from which the criminal fled, and be presented by its diplomatic agent (or, if he is absent, by a consular officer) to the government of the nation, or to the governor of the colony, in which the

criminal takes refuge. A duly authenticated copy (under seal and properly attested) of the sentence of the court in which the criminal was tried, or a similarly executed copy of the warrant for his arrest in the country where the crime is alleged to have been committed, and of the depositions upon which the warrant may have been issued, should accompany the requisition, which should state the offence in the very words of the treaty applicable to the fugitive. In case of haste, diplomatic agents are sometimes authorized by their government to secure, if possible, the arrest and provisional detention of fugitives from justice.

Some treaties provide that the government to which the diplomatic agent presents a requisition shall issue a warrant or mandate for the arrest of the fugitive. Other treaties empower any competent judicial magistrate to arrest the fugitive upon complaint made under oath, and to hear the evidence, and to certify the same to his government in order that a warrant for the surrender of the fugitive may issue. It is held in the United States that, in the absence of any stipulation regarding who shall issue mandates, the judicial magistrates of the United States may do so without the authorization of the Executive. The warrant for surrender is issued by the duly authorized official of the government which is requested to surrender the fugitive. In the United States that official is the Secretary of State; in France it is the President; and in Great Britain, a Secretary of State. In

the United States and most countries the judicial magistrates are empowered to discharge the fugitive if they deem the evidence insufficient to hold him. In that case he may not be surrendered. On the other hand, if they deem the evidence sufficient, the Executive may decide otherwise, and refuse to surrender him. A nation is not bound to surrender a fugitive already under arrest for an offence committed by him in its territory, but it should be if only civil actions are pending against him. When a fugitive is surrendered to the person authorized to receive him and to escort him to the demanding nation, if such person takes him through the territory of a third nation which has not granted such right of transit by treaty or otherwise, it is within the power of such third nation to order the fugitive to be released. In the United States the Secretary of State will not issue a requisition unless application therefor is made by the governor of the State or territory in which the crime was committed, or by the Department of Justice if the offence committed was against the laws of the United States.

A sentence of acquittal or conviction pronounced either at the defendant's domicile or abroad where the crime was committed, or alleged to have been committed, is a bar to subsequent prosecution for the same cause.

156.

In actions for the recovery of money or property, when the testimony is required of persons residing abroad, it may be obtained on letters rogatory or on a commission. In the United States it is usual in such cases for the parties to the action to apply to the court in which it is pending for an order that a commission be named (often a consul) and directed to take the testimony, certify it, and forward it to the court.

Letters rogatory and commissions.

157.

Claims against foreign governments are presented through the usual channels of diplomacy and in conformity with the rules prescribed by the government of the claimant. The following statements convey an idea of some of the general rules or customary requirements of the Department of State of the United States:

Claims.

Diplomatic agents must obtain the consent of the Department of State before presenting a claim, unless the delay in obtaining it would prove deleterious to the claim. The claimant should state his case to the Department of State in writing, and verify it by oath or affirmation, and should send with it such documents duly executed as may furnish proof of the validity of the claim. The case, besides containing a description of the claim, should include particulars as to the claimant's age, birthplace,

domicile, and occupation, and the amount of the claim, and his title thereto or interest therein. Unless a *prima facie* case is established, the Department of State will decline to present it. When citizens or subjects of other nations wish to present claims against the United States, they must do so through their respective governments, for the Department of State will not consider such claims unless presented by the diplomatic agents of such governments. Claimants of the United States must have been citizens thereof or domiciled therein at the time their claims accrued. The Department of State may agree or refuse to present claims, and when it presents them, it has authority to compromise, withdraw, or arbitrate them. Generally, the United States Government will not present a claim founded on a contract between its citizens and a foreign government, and will not pay interest on claims against itself nor on awards held in trust by it. Some of the commonest claims are those that grow out of injuries or damages occasioned by war. The general rules applicable to such claims are that neutrals are liable for such infractions of their neutrality as they might have prevented by using due diligence; that aliens as well as natives must support the misfortunes that war brings to the nation in which they are domiciled and to themselves and property; that a nation may be held liable for injuries or damages sustained by aliens at the hands of revolutionists whom neither it nor the government of the aliens has recognized as belligerents; and that either of the bel-

ligerents may be held responsible for inflicting wrongs not tolerated by the rules of war.

158.

War should be the ultimate means employed by a nation to secure redress for any wrongs or injuries received from another nation, and should never be undertaken for trivial causes nor if reasonable satisfaction is offered by such other nation.

War ultimate mode of redress.

159.

The usual peaceful methods of giving satisfaction are those of apology and saluting the flag of the affronted nation, and of making such reparation by restitution as may be possible, and by the payment of such indemnity as may be equitable.

Saluting flag, restitution, and indemnity.

160.

When the amount of an indemnity cannot be agreed upon by the parties to a dispute, or when any difference arises between them in regard to public or private claims that they desire to settle amicably, they generally have recourse to arbitration, which is a formal reference of the difference to a third party (usually a mixed commission or an umpire) who is authorized to decide it, and whose decision is final, unless the parties agree to the contrary, and is binding on them unless it is clearly unjust.

Arbitration.

161.

The refusal of a nation to give satisfaction to another nation, or to pay an indemnity awarded by arbitrators, may be resented by the affronted nation by terminating its diplomatic relations and its intercourse with the nation giving the offence; by a naval demonstration; by blockade; by laying an embargo on commerce; by retortion; by reprisals; or by a declaration of war.

Methods of resenting refusal to give satisfaction or pay indemnity.

162.

An embargo is an order issued in times of peace or of war by a nation suspending either foreign or native shipping, or both, or trade in certain articles. Thus the first embargo of the United States, in 1794, suspended commerce for thirty days; the second, of 1807, ordered foreign and domestic ships in the ports of the United States to remain in them and all domestic vessels abroad to return; the third, of 1812, stopped shipping and was followed by an act prohibiting exportations by land; and the fourth embargo, of 1813 (passed during the war with Great Britain), forbade the exportation of produce and live-stock and suspended the coast trade.

Embargo.

163.

One of the newest methods of securing redress for wrongs is to blockade an offending nation's ports or coasts and to declare that it does not mean war. The first blockade of this kind occurred in 1827 on the coasts of Greece, and was fol-

Pacific blockades and Droit d'angarie.

lowed by the blockade of the Tagus in 1831; of Holland in 1833; of Mexico in 1838; of the Argentine Republic from 1838 to 1848; of the Sicilian ports in 1860; of Bolivia in 1879; and of the Greek coasts in 1886. It is a method that is not indisputably legal, as it affects the rights of neutrals, but it is quite as tolerable as the exercise of the *Droit d'angarie*, which is the right of a nation to seize and to use or to destroy private vessels of neutrals, in its ports, in emergencies, with the understanding that the neutral owners of such ships will be indemnified for their losses.

164.

Retortion.

Retortion is retaliation, or the adoption of a course of conduct by one nation similar to that of another nation during times of either peace or war. It is applicable in cases of discourtesy, injustice, and harshness.

165.

Reprisals.

The literal meaning of the word reprisal is to retake what is one's own, but that meaning is to be extended so as to include reimbursement for the wrongs or injuries one sustains from another. To reimburse itself, a nation may refuse to pay a debt it owes to the offending nation, or may seize the property and the citizens or subjects of the offending nation, and retain them until it has obtained satisfaction; or it may sell such property when redress cannot be secured after a reasonable delay. Reprisals are public govern-

ment authorizes its officers and others whom it may commission for the purpose to seize wherever found the property and the citizens or subjects of another nation; and private, when it grants letters of marque to private individuals in order that they may reimburse themselves for wrongs or injuries they have received from the private individuals or the government of another nation. Private reprisals are now rarely authorized in times of peace, but public reprisals are still applicable at such times when an offending nation is unduly dilatory in performing its obligations.

166.

Advantage of pacific methods.

The advantage in employing these so-called pacific methods of redress is that they do not necessarily lead to war, and may be terminated at once by the order of the government that employs them without having to make a treaty of peace.

167.

Declaration of war.

There is no special formality prescribed by international law for the declaration of war, and indeed without its being declared at all it may be begun and carried on. Generally, however, actual hostilities are, or should be, preceded by some kind of notice that they may possibly, or will probably or inevitably, be begun. Thus the possibility of war may be inferred from the withdrawal of a nation's diplomatic agent from the offending nation; or from an ultimatum, or definitive

demand, to be complied with within a fixed time; or from reprisals or other acts indicating an intention to get satisfaction; while the conclusion that war is probable or inevitable may be arrived at from the very situation of a dispute, from the concentration of forces on frontiers, from votes of war-supplies, and from the public statements of those having the war-making power. These public statements may take the form of manifestoes to the inhabitants of the territory of the nations that declare war and also of notifications to neutrals; and, as a rule, such manifestoes are or should be published, declaring hostilities and stating the reasons therefor, and instructing both the natives and alien inhabitants of the belligerent nations as to what are their duties and rights; and neutrals generally are or should be duly notified that war will be, or has been, declared.

168.

The war-making power is generally vested in monarchs or legislative bodies. It may, when unrestricted, be delegated, as for instance to those governing colonies, but it may not be assumed without due authorization. The Constitution of the United States provides that Congress shall have power to declare war, to grant letters of marque and reprisal, to make rules concerning captures on land and water, to raise and support armies, to provide and maintain a navy, to make rules for the government and regulation of the land and naval

The war-making power.

forces, and to provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions; that no State shall, without the consent of Congress, engage in war unless actually invaded or in such imminent danger as will not admit of delay; and that the President shall be commander-in-chief of the army and navy of the United States and of the militia of the several States when called into the actual service of the United States. Whatever declaration of war, therefore, is made by the United States must be made by Congress. By the acts of Congress of February 28, 1795, and March 3, 1807, the President is authorized previous to any declaration of war by Congress to meet invasion or insurrection by military force, and Congress may delegate to the President for that purpose the power to call out the militia, and provide that the decision as to the necessity for the call shall be conclusive. The orders of the President unless warranted by law do not protect officers acting under them. As a rule, officers should resist aggressions when on their own territory or warships, but should not take the offensive unless duly authorized so to do.

169.

Kinds of wars.

Wars are foreign or civil, general or limited. When general, they may extend over all the territory of the combatants as well as over the high seas. When limited, they are restricted, as for instance to the high seas or to a certain locality. Exam-

ples of limited wars are those waged between the United States and Spain in 1793 in the Mississippi valley, and between the United States and France, in 1798–99, on the sea.

170.

War, as a rule, abrogates treaties; but if they are by their very nature intended to be, or are plainly declared to be, operative during war times, they may not be regarded as abrogated; but they may, for just cause, be suspended.

Effect of war on treaties.

171.

The rule in regard to enemy's property is that, unless otherwise provided by treaty or agreement, it may all be seized and confiscated wherever found, on land or sea, except when located in the territory of neutrals. The usage of modern times, however, forbids a belligerent to seize within its own territory the goods of non-combatants, who are resident or domiciled there, and who are citizens or subjects of the enemy, or shares held in its public funds, or moneys deposited in its banks by either the enemy or his citizens or subjects, or debts due to them, and a violation of this usage would justify retortions and reprisals. In respect to the other property of the enemy, the declaration of war does not of itself effect a confiscation of it, but only establishes the right to confiscate it. The act of confiscation must, therefore, be duly authorized by law. This right ceases when the war ceases.

Effect of war on enemy's property.

172.

Usually all aliens, including the citizens or subjects of the enemy, are allowed by each belligerent to remain in its territory during war, provided they conform to the rules of conduct it prescribes for them, but they may be required to depart, unless their right to remain has been secured by treaty; still, even then, for just cause they could be expelled. As a rule, they are permitted to depart, if they desire to do so, with their goods within a reasonable or a fixed time after the war has been begun or been declared; and if they do depart within such time, their goods may not be confiscated by either the belligerent possessing the territory they leave, or the belligerent possessing the territory to which they go, nor by either belligerent on the high seas. In case they delay, and do not depart until after a reasonable, or after a fixed, time, they should protect themselves and their goods by securing special passes, so as not to incur the risk of being treated by each belligerent as enemies.

Effect on aliens and their property.

173.

Neither belligerent has the right to sue in the courts of the other to enforce a contract or collect a debt, nor have their citizens or subjects this right. Their right to sue, however, is not lost, but only suspended until the war ends. This rule does not prevent the belligerents and their citizens and subjects from

Effect on contracts.

using their own courts to protect their property. Contracts made with the enemy during war cannot be enforced at law after the war. Partnerships between enemies are absolutely dissolved by war, and not merely suspended. In view of these rules, it would seem that interest should not run during war on enemy's contracts or debts, and that the statute of limitation might properly be held in abeyance.

174.

Effect on ships in port of the enemy and in transitu.

Although the belligerents have the right the moment war begins to seize and condemn each other's ships and cargoes in their ports as droits of admiralty, it is now considered the better practice for them to fix a time within which they may be removed. In the Crimean war this time was fixed at six weeks. If the ship of one belligerent sails, before the commencement of war, for a port of the other belligerent, she and her cargo should be exempt from confiscation, but if she were destined from the outset of her voyage to proceed directly to a neutral port (the port of a third party) she would be liable to seizure and confiscation by the other belligerent.

175.

Effect on right to trade.

The inhabitants (native and alien) of the territory of each belligerent must discontinue intercourse with the inhabitants of the other, and must obey the rule that all business and trade, direct or in-

direct, between the nations at war must cease unless and until intercourse business and trade, general or limited, direct or indirect, are duly authorized. If this rule is not obeyed the articles traded in or forwarded may, if captured, be condemned. It is not unusual for one or both of the belligerents to grant licenses to trade during war, but a license granted by one of them does not protect the articles traded in from seizure by the other unless that other has also granted a license to the same trader. Even general trade was allowed during the Crimean war by Russia, France, and England, but on the condition that it should be effected by the ships of neutrals. Generally, each belligerent concedes to the citizens or subjects of the enemy who are domiciled in its territory all the rights of trade that its own citizens or subjects enjoy, if they elect to remain there; but it is not strictly bound to do so in the absence of a treaty or agreement binding it so to do. The rules in regard to intercourse, business, and trade, in cases of alliance, should be the same for each of the allied powers, and should be observed by them with equal fidelity, for it would not be just for one of them to secure any special advantage for himself, except, of course, with the consent of the others.

176.

Non-Combatants not to fight or plunder.

Non-combatants are regarded as being in relations of non-intercourse with the enemy, and unless authorized they may not commit any hostile acts except in self-defence.

177.

The citizens or subjects of either belligerent, if and while domiciled in a neutral nation, may carry on trade with either belligerent and are to be considered neutrals. But their share in a business-house, located in the territory of an enemy, may be condemned; and if they own land in their native country the produce of the soil may be condemned by the enemy wherever found.

Citizens of belligerents in neutral countries.

178.

The property of the citizens or subjects (provided they are not merely travellers or temporary residents) of either belligerent who remain domiciled in the country of the other belligerent becomes part of the general property of their adopted country, and, as such, is subject to the reprisals authorized by their native country. Furthermore such property as they may have in the general trade of their adopted country may be seized and confiscated by their native country, and they and such property may be considered as stamped with the national character of their adopted country, until they have actually renounced it, and assumed, or started out, *bonâ fide*, to assume their native, or a neutral, national character. Mere declarations of intention are not enough, for they may have been made with the intention of avoiding responsibilities to either belligerent.

National character of property.

179.

The general rule in regard to the appropriation of private property for public use is that when it is thus taken the owner should be compensated for his loss by the appropriator, and that it should only be taken in cases of necessity or of apprehension that it will be seized by the enemy, and will contribute to his strength and resources. Each nation has the right thus to appropriate all private property within its own territory by virtue of the paramount title vested in it by the right of eminent domain; and international law authorizes each belligerent thus to seize private as well as public property situated in the territory of the other. In cases of reprisals, it would seem as if the nation in which private property is taken, should make good the loss of the owner.

Appropriation of private property for public use.

180.

It is usual for the nations to stipulate in their treaties with one another that if they engage in war a certain length of time shall be given to those of their citizens or subjects residing in each other's territory to arrange their business and to depart with the safe conduct necessary to protect them and their property, in case they decide to depart; but that they may remain and pursue without personal molestation their usual peaceful vocations, and that their houses and goods shall not be destroyed, nor

Treaty stipulations in regard to persons and property on land.

their fields wasted by either belligerent, and that if, owing to the necessities of war, any of their property be taken from them by either belligerent, the same shall be paid for at a reasonable and fair price.

181.

As a rule the nationality of a ship is determined by the domicile of the owner, unless she sails under the flag and papers (crew-list, shipping articles and register) of a nation in which he is not domiciled, in which case she is deemed to be of the nationality of such flag and papers. The flag only offers *prima facie* evidence of nationality: the papers, however, must be accepted on the high seas as valid by all nations, unless the nation that issued them decides that they were secured in contravention of its laws. Each nation has the right to regulate the documentation of its ships, and to legislate as to whether or not it will admit foreign-built vessels to the privilege of being registered and of paying equally light duties with those made at home. The United States do not admit foreign-built vessels to that privilege; but such vessels when owned by citizens of the United States are entitled, if they were purchased in good faith, and if the ownership is absolute, to be regarded and protected as American property and to fly the flag of the United States; and the Consular officers of the United States in the ports in which such foreign-built vessels were purchased, may make record of the bills of sale in their offi-

Nationality of ships.

cial registers, authenticate their execution, and provide the purchasers with certificates to that effect, and indorse on the certificates the fact that the purchasers are citizens of the United States. These certificates furnish *prima facie* evidence that the sale was *bonâ fide*. Home-made ships of the United States are entitled to be registered, if employed in foreign commerce, and to be enrolled and licensed, if employed in the coasting-trade or fisheries, provided they are wholly owned by citizens of the United States. When owned wholly or in part by foreigners they are entitled to be recorded, but not in general to be registered or enrolled and licensed (Act of 1792). As international law does not prescribe the documentation of vessels, the nations in order to avoid difficulties with one another generally have stipulations in their treaties to the effect that if one of the parties to the treaty is engaged in war the ships of the other party shall be furnished with sea-letters or passports.

182.

Who may wage war.

Aggressive hostilities may be undertaken in behalf of a nation only by persons whom it authorizes to do so. Those that disregard this rule may, if on land, be considered outlaws, and, if on the sea, pirates. Those authorized to wage war are those who compose the military and naval forces of a nation, and who have the uniform peculiar to the service of that nation. These forces include on land the regular army and the mili-

tia or volunteers of the nation, and, on sea, the regular and volunteer navy and such privateers as it commissions. Marauding soldiers may not be considered outlaws if they are in uniform, nor may camp-followers or others attending on the commissioned forces, nor should insurgents who have undertaken a permanent revolt or revolution in sufficient numbers to warrant the hope of ultimate success.

183.

Privateers.

Privateers are private vessels commissioned for war. They carry letters of marque and reprisal, and they are authorized to capture, or destroy, the property of the enemy on the high seas and in the enemy's territory, but not within the three-mile limit of the territory of neutrals. The private ships of neutrals may be thus commissioned by belligerents, in the absence of treaties forbidding them or the neutrals so to do. Generally, bonds are required of the owners of privateers in order that the belligerent may reimburse itself for any indemnities it may have to pay for their unauthorized and illegal acts. If private vessels are used as privateers without being commissioned, their crews may not strictly be regarded as entitled to claim prize money for the captures they make; and while they may not be considered pirates if they belong to a belligerent, they may be treated with rather more severity by the enemy than if they acted under a commission. Privateering is princi-

pally plundering. The parties to the Declaration of Paris, 1856, agreed to abolish it, and all the other principal powers acceded to that provision except the United States, Mexico, and Spain. The United States have not been willing to abolish privateering except on the condition that the private property (not contraband of war) of all nations and at all times be exempted from seizure on the high seas. So long as it is not thus exempted, nations with a small navy are at a great disadvantage, and may properly reserve to themselves the right to rely on the aid of merchant or private vessels to decrease their inferiority to their enemies as commerce destroyers.

184.

Visitation and search.

The public (war) vessels of neutrals may at no time be visited and searched by belligerents, and the private vessels of neutrals may be visited and searched only (except to enforce revenue laws or prevent piracy) in time of war and for probable cause, and then only by the belligerents. Piratical ships, or ships suspected of being piratical, may at any time be visited, but proceedings against them must cease at once if it is discovered that they are not piratical. Any act of supererogation on the part of the searchers justifies a demand for redress. The object of visitation and search is to ascertain the nationality of the ship, the character of the cargo, and to make proper captures or seizures in proper cases. In the absence of treaty stipulations bind-

ing on the belligerents in regard to the number of men that may be of the boarding party, and the method of procedure they must adopt, a suspected ship may be boarded by two or three searchers in uniform, or one of the principal officers of such ship may be required to appear with the ship's papers for examination on board of the belligerent cruiser, which must make herself known (as, for instance, by displaying her flag), before she can require the suspected ship to heave to either by oral demand or by firing a shot across her bows. If further measures are resorted to by the cruiser, they must be at her risk, for innocent ships have the right to proceed on their way, and may only be condemned if they have offered undue resistance. Visitation and search have at times been reciprocally allowed by nations for the purpose of suppressing the slave trade, and the right is in such cases to be exercised as stipulated in the treaty authorizing it.

185.

A billigerent out of comity, or because of treaty stipulations, generally abstains from visiting and searching the merchant ships of neutrals under convoy of their public vessels, provided the commanders of such **Convoy.** public vessels satisfy the belligerent that the merchant ships do not belong to the enemy and do not carry goods that may be properly seized. It is usual for the boarding party to leave their cruiser when at the ordinary distance

from the convoy that a cannon ball can be projected, and to proceed to the convoy in a small boat, and examine the papers of the merchant ships on board of the convoy. Privateers are not allowed to send a visiting party to, or to molest, a convoy.

186.

Impressment. Persons may not be taken from a neutral ship on the high seas on the ground that they are citizens or subjects of the belligerent claiming them, and pressed into its service.

187.

Capture. When a ship is captured either because it belongs to the enemy or is engaged in illicit commerce with the enemy, the captor must place a sufficient force in her to control her, otherwise the ship may proceed on her way regardless of the fact of capture. The mere act of capture does not convey a title to either the ship or cargo, but it gives the prize crew the right to take them to port, if they can, for condemnation by a court of competent jurisdiction. If, however, the captor finds that the ship cannot be taken to one of his own ports because of her unseaworthiness or any other good reason, he may sell her in a neutral port, and afterwards deposit the proceeds of the sale in one of his own nation's prize courts, or, in case of necessity, he may destroy her, or abandon her, or let the owner or his agents ransom her, provided the municipal law of his nation does not restrict his right to use his own judgment

as to what is best to be done with her. If the ship is abandoned, and is taken by a neutral to one of its ports, the owner, unless he had recaptured her, has no claim on the surplus remaining over and above the amount distributed for salvage to the neutral, such surplus properly belonging to the captor. Captors are not responsible for such seizures as they make for probable cause, and convey to their ports. Recaptures made by the enemy of the captor may be regarded as prizes, and may be proceeded against the same as captures. A captor when in doubt as to whether the capture is legal should generally relinquish it. If it is sold, and the title afterwards proves bad, the buyer may proceed to make a claim against the captor's government, for the neutral always buys subject to the true title. An owner who ransoms his ship or recovers her before she is condemned is deemed, according to the *jus postliminii*, to have regained his title as fully as if he had never lost it. A ship that has been ransomed, is entitled to receive a safe-conduct good for the rest of the voyage. The right to pay or to receive ransoms may be denied or restricted by belligerents. Salvage is allowed generally for saving a vessel and cargo from the enemy, from pirates, and from perils of the sea. It should never be withheld from neutrals. The ships of neutrals, when captured, should not be destroyed before they are condemned by the prize court. When neutral ships are innocent, the owner retains the title, no matter how many times they may

be captured or recaptured. The validity of the captor's commission can only be decided by the courts of his own nation.

188.

Rules as to goods on the high seas. Prizes and salvage.

The general rule of international law in regard to property on the high seas is that each belligerent has the right to seize all of the enemy's property of every kind, except such property as is protected by a special permit, but that prizes may not be made of the property of neutrals unless it is contraband. Therefore the goods of an enemy on the ship of a neutral may be taken (but the ship is entitled to freight) and the non-contraband goods of a neutral on an enemy's ship ought to be restored. Contraband goods going to the enemy may always be taken no matter to whom they belong. The inconveniences and delays caused by these rules have led many of the nations to stipulate with each other in their treaties that free ships make free goods (except contraband of war) and that enemy ships make enemy goods. The first is a concession of the belligerent, while the second is a concession of the neutral. They are correlative maxims, but if only one of them is expressed in a treaty the other can not be implied. The rules that are now binding on all of the maritime powers, except the United States (who however, observed them during the civil war) are the two embodied in the Declaration of Paris, 1856:

1. The neutral flag covers enemy's goods except contraband of war. 2. Neutral goods, except contraband of war, are not liable to capture under the enemy's flag. These rules, however, do not derogate from the right of search, to discover a ship's true nationality or the nature of her cargo, nor do they absolve neutral ships from liability for attempting to run blockades.

189.

The right to take prizes is a belligerent right and is granted to the belligerent's public ships and privateers. The prize courts of belligerents must be within their own territories, and they cannot extend their jurisdiction to the territory of a neutral. These courts decide the questions of belligerency, neutrality, capture, and contraband, and from them are derived the titles to prizes. In the United States the District and Circuit Courts have jurisdiction over prizes, and appeals lie to the Supreme Court of the United States. Consuls in neutral ports cannot condemn captures, and give titles; nor can the courts of an ally, except with the consent of the captor; but courts may be established in the territory of an ally. Neutrals may close their ports against prizes, if they desire, except when to do so would be inhumane; and they are not to exercise jurisdiction in their courts over a capture unless the belligerent made it in their territory or unless they themselves made the capture; as for instance, because the

Prize courts.

vessel captured was fitted out and attempting to leave their territory. The title to the capture is held in abeyance when the property is brought *infra præsidia* of the captor, and is only determined and vested when the court renders its decision. The fact of capture establishes the jurisdiction of the court. If the capture took place in neutral waters, the neutral alone can object to it. If the prize court has jurisdiction, and is properly constituted, its decree of condemnation is conclusive so far as the title and right to possession of the property is concerned, but an injured party may, if the condemnation was unlawful, claim an indemnity from the government of the nation within which the court is situated. Prize money is generally allowed by belligerents to captors even if they are not commissioned. Agreements are made usually by allies as to the distribution of prize money when the capture is joint. As a rule the property of a neutral recaptured from the enemy should be restored to the neutral, on payment of salvage, provided the property was not condemned before its recapture. A prize court may be instructed by its sovereign: otherwise it must proceed according to the rules prescribed for it, and the treaties and principles of international law that are applicable to each case.

The statutes of the United States direct the commanding officer of any vessel making a capture to send the prize with the documents, papers, and witnesses (found on board of the prize) under a competent prize-master

and prize-crew into port for adjudication; and they provide that the net proceeds of all property condemned as prize, shall, where the prize was of superior or equal force to the vessel or vessels making the capture, be decreed to the captors; and when of inferior force one-half shall be decreed to the United States and the other half to the captors, except that in case of privateers and letters of marque, the whole shall be decreed to the captors, unless it shall be otherwise provided in the commissions issued to such vessels. Vessels of the Navy, however, within signal-distance of the vessel or vessels making the capture, if able to render effective aid, are entitled to share the prize. When a ship or other property of the United States has been recaptured from the enemy, if they have not been condemned by the enemy, a meet and competent sum is awarded by the court as salvage, and such ship or property is returned to the owner. If they belong to a neutral, they are returned under the same conditions that the sovereign of the neutral has been accustomed to return similar recaptured property to a citizen of the United States; otherwise they are returned upon the payment of such salvage, costs, and expenses as the court shall order. None of these rules, however, may be understood to contravene any treaty of the United States applicable to the case before the court of prize.

190.

Each belligerent may capture not only all of the enemy's property found on the high seas and on belligerent waters (except as otherwise provided by treaty) but also all property of neutrals, intended for the enemy, of actual use in conducting war: such property is called contraband of war, and it may be lawfully condemned as a prize of war. The government of a neutral is not bound to prevent its citizens or subjects from exporting contraband goods to a belligerent, but it may not permit a belligerent ship to be fitted out in its ports or let its territory be used by a belligerent as a base of operations, nor may it itself carry on trade with the belligerent in contraband of war. If such goods are exported, *bonâ fide*, by one neutral to another neutral they may not be considered contraband: otherwise they may be. There is much diversity of opinion as to what articles may be classed as contraband, and often treaties are made between nations in which are specified the articles that are to be considered by them as contraband in case of war. Furthermore, the belligerents usually issue a list of articles they will treat as contraband. When no such lists are issued and when there is no treaty applicable to seizures, the courts may take into consideration the character and the use of the articles and the peculiar circumstances and conditions in which the belligerents find themselves, and they may lawfully condemn, as has been stated, all property that has been duly seized and that is intended for

Contraband.

the actual use of the enemy in conducting the war. Articles that are never used for warlike purposes may not be lawfully condemned. Articles that are used either for hostile or peaceful purposes may be condemned if it is made clear that they were intended for hostile purposes. Thus coal and provisions and other articles used in peace may lawfully be seized if they are intended to supply the army and navy of the enemy, or if they will prevent the enemy from being reduced to sue for peace, or if they are absolutely necessary for the use of the belligerent who seizes them, but in all such cases such belligerent should pay their full value, a reasonable profit, and freight, or restore them to the owner with a suitable indemnity after it is no longer necessary to detain them: but generally provisions should not be regarded as contraband unless it is intended to send them to a besieged or blockaded place occupied by the enemy. Neutrals, furthermore, are not allowed by a belligerent to provide the enemy with ships of war or transport, or to carry the enemy's troops or despatches (except those sent to diplomatic agents and consular officers in neutral countries). Private individuals, private letters, and the mails may, however, be carried by neutrals, and so may diplomatic agents and consular officers appointed to neutral countries, and all other persons who do not belong to the military or naval forces of the enemy. When seizures are made of military or naval persons they may not be removed from the ship, but the ship herself must also be seized and brought

within the jurisdiction of a competent prize court. The Commander of the United States Cruiser, *San Jacinto*, erred, therefore, when he took the Confederate agents, Slidell and Mason, from the British Mail Steamer, *Trent*, in 1861. He was not justified in arresting them, and even if he had been he should have allowed them to remain on board the *Trent* and should have thus brought them to a home port for adjudication. President Lincoln, consequently, very wisely returned them to the protection of the British flag. No one was ever more anxious than he was, to prove that the United States can always afford to do what is right. The general rules in regard to the liability of contraband property to be seized are these: (1) When the ship and contraband articles belong to one and the same owner they and the innocent articles on board may be condemned. (2) The ship and the contraband and innocent articles may all be condemned if the ship is sailing under false papers, or carrying contraband in contravention of a treaty. (3) If the ship and contraband belong to different owners, and there is no fraud in the papers, the contraband articles may alone be confiscated. (4) Freight is not allowed on contraband articles, but it is on innocent articles condemned as enemy's property. (5) Contraband articles may be seized during the voyage while *in delicto*, but if they are not thus seized the proceeds may not be seized on the return voyage. (6) Neutrals may trade freely with belligerents except in contraband articles and except with besieged or blockaded places.

191.

Blockade.

A blockade exists when an efficient naval force interdicts communication with an enemy's port or coast. The object of a blocade is to cut off the enemy's supplies, and reduce his powers of resistance. The interdiction must be applicable equally and alike to friend and foe; for a belligerent may not exercise the right of blockade in order to favor himself or an ally in matters of trade and commerce. An unlawful breach of blockade can only exist during the war and after due notice has been given of the belligerent's intention to establish a blockade. The notice may be express and addressed to all neutrals, or it may be given directly to a ship intending to enter the blockaded district, or it may be inferable from visible conditions and circumstances. When an express notice has been given to neutrals, their citizens or subjects may be held to have been duly notified, and the blockading belligerent may capture any of their ships that started for the blockaded place after their government had been thus notified, even if they have only begun their voyage, for their intention to run the blockade in this case constitutes a breach of blockade. A ship that has undoubtedly not received notice, express or implied, of the fact of blockade should not be liable to capture; but if, warned away, she returns, or hovers about as if awaiting a chance to enter the interdicted place, she renders herself liable to capture and condemnation. Neutral ships in blockaded ports may depart with the

cargo they have at the time they receive the notice of blockade (and they are supposed to receive it the moment the blockade exists) but they may not obtain cargoes afterwards. Paper blockades, or written declarations of the existence of a blockade, are not sufficient to constitute a lawful interdiction of commerce and communication. There must be a force at or near the point blockaded strong enough to make a violation of the blockade a dangerous undertaking. A mere temporary absence of the force, owing to bad weather, does not suspend or end the blockade. Neutral war-vessels and persons provided with safe conducts and vessels in real distress may be allowed to enter interdicted ports or territory, but they may not with impunity aid the enemy. In order to make a blockading force more effective, land batteries may be maintained and inferior channels may be obstructed temporarily. Ships and cargoes destined for blockaded ports, or seized while attempting to violate the blockade, and ships that have violated a blockade and been captured before the end of their return voyage, may be taken for condemnation. The notice of the termination of a blockade should be given as publicly as was the notice declaring its inception or existence. As a rule, blockades that have been expressly notified to neutrals are deemed to continue until the blockading belligerent expressly notifies the neutrals that he has terminated them. When a blockade ends, a new notice must be given in case the belligerent decides to re-establish the interdiction.

192.

The principal general rules of war are that it must be undertaken with a lawful object in view; that it must be conducted in a civilized manner; that only enough force should be used to accomplish the legitimate purposes of the war; and that it must not be wantonly and unnecessarily protracted. If these rules are disregarded neutral nations may intervene.

Principal general rules of war.

193.

If either belligerent violates any of the humane usages of war the other may retaliate to a reasonable degree, provided the offending belligerent does not make due reparation for his excess, but neither of them should ever be guilty of unusual cruelty or unconscionable crime. Poison and poisoned arms and instruments calculated to torture should not be used; nor should those that have surrendered be murdered; nor should unfortified towns be bombarded, or hospitals attacked, or prisoners ill-treated unless they are insubordinate. The wounded and those authorized to care for them should be respected and protected. While forts may be bombarded or assailed in any manner necessary to effect their capture and without notification, fortified towns should not be bombarded until the non-combatant inhabitants have had a chance to withdraw, unless it is absolutely requisite to take such towns by surprise. Members of the government and private persons who do not take up arms except in self-defence should

Principal special rules of war.

not be treated as outlaws nor be unduly molested; and private property, as a rule, should not be appropriated except in cases of necessity, and then only on the payment of a fair compensation. All public personality (movable property) and all revenues of public real property may be seized, and taxes and contributions may be levied. The property of eleemosynary and educational institutions should not be taken, nor should public libraries or museums be plundered. Neither the combatants nor the non-combatants of either belligerent may be forced to fight against their own country, nor to swear allegiance to the government of their captors, who are bound to maintain law and order to the best of their ability in the districts they occupy and control. The object of war should be to disable, and not to annihilate, the enemy, and any instruments or machines may be used that are duly made to accomplish that object.

194.

Exchange of prisoners.

Prisoners, in the absence of treaties prescribing different rules, may be ransomed, kept until the end of the war, or exchanged absolutely or conditionally, as, for instance, on parole not to serve during the rest of the war or until exchanged.

195.

Booty.

Property taken from the enemy on land is generally called booty. Possession gives title, and adjudication by the courts is not necessary to confirm it. But all booty belongs of right to the gov-

ernment the captor is serving, and such government may restore it, claim it all, distribute a part of it, or let the captor retain it. As a rule no private property is taken as booty except on the field of battle, or when a captor's place is sacked, or because it is needed to support the captor's army or to enforce a penalty, or because it is absolutely necessary (as was cotton in the American Civil War) to furnish the enemy with funds and supplies and other means to protract the war. The limit to which a belligerent may justly go to end a war was probably reached by General Sherman in the American Civil War when he crippled the resources of Georgia and Carolina.

196.

Military and martial law.

Military law is that established by a government for its military and naval forces to observe during times of war and peace. Martial law is that exercised by the military in cases of necessity when either the usual military or municipal law is insufficient. Martial law should cease when the necessity for it ceases.

197.

The Geneva convention.

In 1864 a convention was signed in Geneva, sometimes called the Red Cross Convention, in which provisions were made for the better care and treatment of the wounded in war. All the principal nations are either parties to it or have adhered to it. The provisions are the following:

I. Ambulances and military hospitals shall be acknowledged to be neutral, and, as such, shall be protected and respected by belligerents so long as any sick or wounded may be therein. Such neutrality shall cease if the ambulances or hospitals should be held by a military force.

II. Persons employed in hospitals and ambulances comprising the staff for superintendence, medical service, administration, transport of wounded, as well as chaplains, shall participate in the benefit of neutrality while so employed, and so long as there remain any wounded to bring in and succor.

III. The persons designated in the preceding article may, even after occupation by the enemy, continue to fulfil their duties in the hospital or ambulance which they serve, or may withdraw in order to rejoin the corps to which they belong. Under such circumstances, when those persons shall cease from their functions, they shall be delivered by the occupying army to the outposts of the enemy.

IV. As the equipment of military hospitals remains subject to the laws of war, persons attached to such hospitals cannot, in withdrawing, carry away any articles but such as are their private property. Under the same circumstances an ambulance shall, on the contrary, retain its equipment.

V. Inhabitants of the country who may bring help to the wounded shall be respected and shall remain free. The generals of the belligerent powers shall make it their

care to inform the inhabitants of the appeal addressed to their humanity, and of the neutrality which will be the consequence of it. Any wounded men entertained and taken care of in a house shall be considered as a protection thereto. Any inhabitant who shall have entertained a wounded man in his house shall be exempted from the quartering of troops, as well as from a part of the contributions of war which may be imposed.

VI. Wounded or sick soldiers shall be entertained and taken care of, to whatever nation they may belong. Commanders-in-chief shall have the power to deliver immediately to the outposts of the enemy soldiers who have been wounded in an engagement, when circumstances permit this to be done, and with the consent of both parties. Those who are recognized, after their wounds are healed, as incapable of serving, shall be sent back to their country. The others may also be sent back on condition of not again bearing arms during the continuance of the war. Evacuations, together with the persons under whose directions they take place, shall be protected by an absolute neutrality.

VII. A distinctive and uniform flag shall be adopted for hospitals, ambulances, and evacuations. It must on every occasion be accompanied by the national flag. An arm badge shall also be allowed for individuals neutralized, but the delivery thereof shall be left to military authority. The flag and arm-badge shall bear a red cross on a white ground.

198.

The Declaration of St. Petersburg, 1868, which was agreed to by the principal powers of Europe and by Persia (but not by the United States), provides that the contracting and acceding parties thereto engage mutually to renounce in case of war among themselves, the employment by their military or naval troops of any projectile of a weight below 400 grammes, which is either explosive or charged with fulminating or inflammable substances; and it contains the declaration that the only legitimate object that the nations should endeavor to accomplish during war is to weaken the military forces of the enemy.

St. Petersburg declaration.

199.

Each nation provides its own forces with manuals of war in which may be found the rules to be observed by them in the conduct of war.

Manuals of war.

200.

At Brussels, in 1874, there was a conference of delegates from all the countries of Europe, and they framed rules and regulations in regard to the conduct of war, but did not enter into any agreement to render them binding on the nations they represented. Still, many of the rules and regulations have been incorporated in various manuals of war, and they are valuable as showing what views obtain general acceptance in Europe as to the manner in which

The Brussels conference.

war should hereafter be waged. The articles of the declaration are the following:

1. A territory is considered as occupied when it is actually placed under the authority of the hostile army. The occupation only extends to those territories where this authority is established and can be exercised. **Military authority.**

2. The authority of the legal power being suspended, and having actually passed into the hands of the occupier, he shall take every step in his power to re-establish and secure, as far as possible, public safety and social order.

3. With this object he will maintain the laws which were in force in the country in time of peace, and will only modify, suspend, or replace them by others if necessity obliges him to do so.

4. The functionaries and officials of every class who at the instance of the occupier consent to continue to perform their duties, shall be under his protection. They shall not be dismissed or be liable to summary punishment unless they fail in fulfilling the obligations they have undertaken, and shall be handed over to justice, only if they violate those obligations by unfaithfulness.

5. The army of occupation shall only levy such taxes, dues, duties, and tolls as are already established for the benefit of the State, or their equivalent, if it be impossible to collect them, and this shall be done as far as possible in the form of, and according to, existing practice. It shall devote them to defraying the expenses of the administra-

tion of the country to the same extent as was obligatory on the legal government.

6. The army occupying a territory shall take possession only of the specie, the funds, and marketable securities, etc., which are the property of the State in its own right, the depôts of arms, means of transport, magazines, and supplies, and, in general, all the personal property of the State, which is of a nature to aid in carrying on the war. Railway plant, land telegraphs, steam and other vessels, not included in cases regulated by maritime law, although belonging to companies or to private individuals, are to be considered equally as means of a nature to aid in carrying on a war, which cannot be left by the army of occupation at the disposal of the enemy. Railway plant, land telegraphs, as well as the steam and other vessels above mentioned, shall be restored, and indemnities be regulated on the conclusion of peace.

7. The occupying State shall only consider itself in the light of an administrator and usufructuary of the public buildings, real property, forests, and agricultural works belonging to the hostile State, and situated in the occupied territory. It is bound to protect these properties, and to administer them according to the laws of usufruct.

8. The property of parishes, of establishments devoted to religion, charity, education, arts, and sciences, although belonging to the State, shall be treated as private property. Every seizure, destruction of, or wilful damage to such establishments, historical monuments, or works of art

or of science, should be prosecuted by the competent authorities.

9. The laws, rights, and duties of war are applicable not only to the army, but likewise to militia and corps of volunteers complying with the following conditions: That they have at their head a person responsible for his subordinates; that they wear some settled distinctive badge recognizable at a distance; that they carry arms openly; and that in their operations they conform to the laws and customs of war. In those countries where the militia form the whole or part of the army, they shall be included under the denomination of *army*.

Belligerents and non-combatants.

10. The population of a non-occupied territory, who, on the approach of the enemy, of their own accord take up arms to resist the invading troops, without having had time to organize themselves in conformity with Article 9, shall be considered as belligerents, if they respect the laws and customs of war.

11. The armed forces of the belligerents may be composed of combatants and non-combatants. In the event of being captured by the enemy, both one and the other shall enjoy the rights of prisoners of war.

12. The laws of war do not allow to belligerents an unlimited power as to the choice of means of injuring the enemy.

Injuring the enemy.

13. According to this principle are strictly forbidden: the use of poison or poisoned weapons; murder by treach-

ery of individuals belonging to the hostile nation or army; murder of an antagonist who, having laid down his arms, or having no longer the means of defending himself, has surrendered at discretion; the declaration that no quarter will be given; the use of arms, projectiles, or substances which may cause unnecessary suffering, as well as the use of projectiles prohibited by the declaration of St. Petersburgh in 1868; abuse of the flag of truce, the national flag, or the military insignia or uniform of the enemy, as well as the distinctive badges of the Geneva Convention; all destruction or seizure of the property of the enemy which is not imperatively required by the necessity of war.

14. Stratagems and the employment of means necessary to procure intelligence respecting the enemy or the country (subject to the provisions of Article 36) are considered as lawful means.

15. Fortified places are alone liable to be besieged. Towns, agglomerations of houses, or villages, which are open or undefended cannot be attacked or bombarded.

Sieges and bombardments.

16. But if a town or fortress, agglomeration of houses, or village, be defended, the commander of the attacking forces should, before commencing a bombardment, and except in the case of surprise, do all in his power to warn the authorities.

17. In the like case, all necessary steps should be taken to spare, as far as possible, buildings devoted to religion,

arts, sciences, and charity, hospitals, and places where sick and wounded are collected, on condition that they are not used at the same time for military purposes. It is the duty of the besieged to indicate these buildings by special visible signs, to be notified beforehand by the besieged.

18. A town taken by storm shall not be given up to the victorious troops to plunder.

19. No one shall be considered as a spy but those who, acting secretly or under false pretenses, collect or try to collect information in districts occupied by the enemy, with the intention of communicating it to the opposing force.

Spies.

20. A spy, if taken in the act, shall be tried and treated according to the laws in force in the army which captures him.

21. If a spy who rejoins the army to which he belongs is subsequently captured by the enemy, he is to be treated as a prisoner of war, and incurs no responsibility for his previous acts.

22. Military men, who have penetrated within the zone of operations of the enemy's army, with the intention of collecting information, are not considered as spies if it has been possible to recognize their military character. In like manner military men (and also non-military persons carrying out their mission openly) charged with the transmission of despatches either to their own army or to that of the enemy, shall not be considered as spies if captured by the enemy. To this class belong also, if cap-

tured, individuals sent in balloons to carry despatches, and generally to keep up communication between the different parts of an army or of a territory.

23. Prisoners of war are lawful and disarmed enemies. They are in the power of the enemy's government, but not of the individuals or the corps who made them prisoners. They should be treated with humanity. Every act of insubordination authorizes the necessary measures of severity to be taken with regard to them. All their personal effects except their arms are considered to be their own property.

Prisoners of war.

24. Prisoners of war are liable to internment in a town, fortress, camp, or in any locality whatever, under an obligation not to go beyond certain fixed limits; but they may not be placed in confinement unless absolutely necessary as a measure of security.

25. Prisoners of war may be employed on certain public works which have no immediate connection with the operations in the theatre of war, provided the employment be not excessive, nor humiliating to their military rank if they belong to the army, or to their official or social position if they do not belong to it. They may also, subject to such regulations as may be drawn up by the military authorities, undertake private work. The pay they receive will go towards ameliorating their position, or will be placed to their credit at the time of their release. In this case the cost of their maintenance may be deducted from their pay.

26. Prisoners of war cannot be compelled in any way to take any part whatever in carrying on the operations of war.

27. The government, in whose power are the prisoners of war, undertakes to provide for their maintenance. The conditions of such maintenance may be settled by a mutual understanding between the belligerents. In default of such an understanding, and as a general principle, prisoners of war shall be treated, as regards food and clothing, on the same footing as the troops of the government who made them prisoners.

28. Prisoners of war are subject to the laws and regulations in force in the army in whose power they are. Arms may be used, after summoning, against a prisoner attempting to escape. If retaken, he is subject to summary punishment (*peines disciplinaires*), or to a stricter surveillance. If after having escaped he is again made prisoner, he is not liable to any punishment for his previous escape.

29. Every prisoner is bound to declare, if interrogated on the point, his true name and rank, and in case of his infringing this rule, he will incur a restriction of the advantages granted to the prisoners of the class to which he belongs.

30. The exchange of prisoners of war is regulated by mutual agreement between the belligerents.

31. Prisoners of war may be released on parole if the laws of their country allow of it, and in such a case they are bound on their personal honor to fulfil scrupulously,

as regards their own government, as well as that which made them prisoners, the engagements they have undertaken. In the same case their own government should neither demand nor accept from them any service contrary to their parole.

32. A prisoner of war cannot be forced to accept release on parole, nor is the enemy's government obliged to comply with the request of a prisoner claiming to be released on parole.

33. Every prisoner of war liberated on parole, and retaken carrying arms against the government to which he had pledged his honor, may be deprived of the rights accorded to prisoners of war, and may be brought before the tribunals.

34. Persons in the vicinity of armies, who do not directly form part of them, such as correspondents, newspaper reporters, vivandiers, contractors, etc., may also be made prisoners of war. These persons should, however, be furnished with a permit issued by a competent authority, as well as with a certificate of identity.

35. The duties of belligerents, with regard to the treatment of sick and wounded, are regulated by the Convention of Geneva of the 22d August, 1864, subject to the modifications which may be introduced into that Convention.

Sick and wounded.

36. The population of an occupied territory cannot be compelled to take part in military operations against their own country.

Private persons.

37. The population of occupied territories cannot be compelled to swear allegiance to the enemy's power.

38. The honor and rights of the family, the life and property of individuals, as well as their religious convictions and the exercise of their religion, should be respected. Private property cannot be confiscated.

39. Pillage is expressly forbidden.

40. As private property should be respected, the enemy will demand from parishes, or the inhabitants, only such payments and services as are connected with the necessities of war generally acknowledged, in proportion to the resources of the country, and which do not imply, with regard to the inhabitants, the obligation of taking part in the operations of war against their own country.

Contributions and requisitions.

41. The enemy, in levying contributions, whether as equivalents for taxes, or for payments which should be made in kind, or as fines, will proceed, as far as possible, according to the rules of the distribution and assessment of the taxes in force in the occupied territory. The civil authorities of the legal government will afford their assistance, if they have remained in office. Contributions can be imposed only on the order and on the responsibility of the general-in-chief, or of the superior civil authority established by the enemy in the occupied territory. For every contribution a receipt shall be given to the person furnishing it.

42. Requisitions shall be made only by the authority of

the commandant of the locality occupied. For every requisition an indemnity shall be granted, or a receipt given.

43. An individual authorized by one of the belligerents to confer with the other, or presenting himself with a white flag, accompanied by a trumpeter (bugler or drummer), or also by a flag-bearer, shall be recognized as the bearer of a flag of truce. He, as well as the trumpeter (bugler or drummer), and the flag-bearer, who accompany him, shall have the right of inviolability.

Flags of truce.

44. The commander to whom a bearer of a flag of truce is dispatched, is not obliged to receive him under all circumstances and conditions. It is lawful for him to take all measures necessary for preventing the bearer of the flag of truce taking advantage of his stay within the radius of the enemy's position, to the prejudice of the latter; and if the bearer of the flag of truce is found guilty of such a breach of confidence, he has the right to detain him temporarily. He may equally declare beforehand that he will not receive bearers of flags of truce during a certain period. Envoys presenting themselves after such a notification from the side to which it has been given, forfeit their right to inviolability.

45. The bearer of a flag of truce forfeits his right of inviolability, if it be proved in a positive and irrefutable manner that he has taken advantage of his privileged position to incite to, or commit, an act of treachery.

46. The condition of capitulations shall be discussed by the contracting parties. The conditions should not be contrary to military honor. When once settled by a convention, they should be scrupulously observed by both sides. **Capitulations.**

47. An armistice suspends warlike operations by a mutual agreement between the belligerents. Should the duration thereof not be fixed, the belligerents may resume operations at any moment, provided, however, that proper warning be given to the enemy, in accordance with the conditions of the armistice. **Armistices.**

48. An armistice may be general or local. The former suspends all warlike operations between the belligerents; the latter only those between certain portions of the belligerent armies, and within a fixed radius.

49. An armistice should be notified officially and without delay to the competent authorities and to the troops. Hostilities are suspended immediately after the notification.

50. It rests with the contracting parties to define in the clauses of the armistice the relations which shall exist between the populations.

51. The violation of the armistice by either of the parties gives to the other the right of terminating it.

52. The violation of the clauses of an armistice by private individuals, on their own personal initiative, only affords the right of demanding the punishment of the

guilty persons, and, if there is occasion for it, an indemnity for losses sustained.

53. The neutral State receiving in its territory troops belonging to the belligerent armies, will intern them, so far as it may be possible, away from the theatre of war. They may be kept in camps, or even confined in fortresses, or in places appropriated to this purpose. It will decide whether the officers may be released on giving their parole not to quit the neutral territory without authority.

54. In default of a special agreement, the neutral State which receives the belligerent troops will furnish the interned with provisions, clothing and such aid as humanity demands. The expenses incurred by the internment will be made good at the conclusion of peace.

55. The neutral state may authorize the transport across its territory of the wounded and sick belonging to the belligerent armies, provided that the trains which convey them do not carry either the *personnel* or *matériel* of war. In this case the neutral State is bound to take the measures necessary for the safety and control of the operations.

56. The convention of Geneva is applicable to the sick and wounded interned on neutral territory.

201.

Civil wars.

A civil war exists when the resistance to the authority of a sovereign nation which is undertaken by its citizens or subjects, passes beyond simple or temporary acts of treason, mutiny or sedition, and as-

sumes the character and proportions of a permanent rebellion or insurrection. Civil wars are not formally declared. They begin with the first acts of hostility. They should be conducted on the same humane principles as are observed in foreign wars in order to prevent the law of retaliation from being put into operation.

202.

De jure and de facto governments.

A *de jure* government is one that has been, and still claims to be, lawfully possessed of sovereignty. A *de facto* government is one that exists with the object of acquiring sovereignty or the recognition of its claim to sovereignty. A *de facto* government is generally established at the very beginning of a civil war, and private persons in the territory under its control may be held to owe it temporary allegiance, and may not be punished by the *de jure* government for acts performed by them in conformity with the obligations imposed on them by such allegiance, or otherwise be treated by it more severely than it would treat foreign private enemies. If a *de facto* government expels the *de jure* government and acquires control of the nation, the officials of such *de facto* government, and the persons who adhere to it, may not be punished for treason by the *de jure* government if it thereafter regains control of the nation. If the *de jure* government is not expelled, neutral nations may continue to treat it as the only lawful and legitimate government, and may regard the *de facto* gov-

ernment as an organization of revolters who have the rights of war only in their relations with the legitimate government, but not with neutrals. Or neutrals may accord to the revolters all belligerent rights if the revolters are entitled to them, or, in proper cases, may intervene, and put an end to the war, or may ally themselves either with or against the revolters. During the American civil war the Federal government, which was the *de jure* or legitimate government, granted enough rights to the Confederates to constitute them belligerents, and it recognized their belligerent obligations, but it never conceded that their *de facto* government was possessed of sovereignty and that the Southern States formed a sovereign nation.

203.

Rights of revolters.

Revolters who have not been recognized as belligerents may exercise the rights of war on land only within the territory they occupy and control, and on the high seas only against their enemy. Neutrals are not justified in treating revolters as outlaws or pirates unless attacked or molested by them, but the enemy (the legitimate government) may so treat them, if permitted so to do by its municipal law, until it recognizes them as belligerents and consequently as under the protection of international law; but, strictly speaking, revolters should never be considered outlaws or pirates unless they are, as a matter of fact, only robbers

or depredators. Generally revolters may expect a neutral to grant them asylum and to admit to its ports any of their vessels that are in distress; and they may carry on such trade as they can with neutrals and give valid clearances to ships that leave their ports.

204.

Responsibility of legitimate government to neutrals.

A sovereignty is not responsible for the acts of revolters whom it cannot control; but if it can control them, it may be held liable for injuries or damages received from them by a neutral or the citizens or subjects of a neutral provided that neither it (the sovereignty) nor the neutral has recognized the revolters as belligerents. Every nation is bound to exercise due diligence in protecting alien residents, and, generally speaking, all neutrals, from violence (from mobs as well as from revolters); and when it fails in its duty, if it does not give them satisfaction in its courts or otherwise, they may petition their governments to present a claim against it for the injuries or damages they have sustained. When a legitimate government recognizes revolters against it as belligerents, it is no longer responsible for their acts; and when neutrals recognize them as such before the legitimate government does, they thereby release the legitimate government from responsibility to them for the acts of the revolters.

205.

A neutral nation that does not recognize revolters as belligerents should not give them aid, and it should use due diligence in preventing its citizens or subjects or any persons within its territory from fitting out expeditions to assist the revolters. But such neutral nation may help a legitimate government to suppress a revolution, or may sell it ships and arms, provided the legitimate government has not recognized the revolters as belligerents; for if it has so recognized them, the obligation is imposed on the neutral nation to refrain from lending assistance to either belligerent unless it wishes to be treated by the other belligerent as an enemy.

Rights and duties of neutrals toward revolters and legitimate government.

206.

When a legitimate government refuses to recognize revolters against it as belligerents, it refuses to concede that the contest is a war as understood by international law. As the rights of visitation and search on the high seas and the establishment of blockades are solely war rights, it follows that if the legitimate government refuses to acknowledge that the contest is a war, it may not stop and search neutral vessels on the high seas, nor require them to respect the blockades it may establish. If the revolters have no ships nor ports under their control, and if the legitimate government does not assert any

Rights and duties of a legitimate government towards neutrals.

belligerent rights for itself in its relations with neutrals it is for the advantage of neutrals not to have belligerent rights conceded to the revolters nor the contest declared to be a war; but if the revolters have ships and ports, and the legitimate government, or the revolutionary government, is disposed to establish blockades and otherwise to molest neutrals, it is important to neutrals to have their rights and duties defined and the wrongs they suffer speedily redressed, in order that controversies and conflicts may be avoided or decided according to the principles of international law, and they may, therefore, if the revolters are in a position in other respects that entitles them to be recognized as belligerents, proclaim that they consider the contest to be a war, and that they will accord belligerent rights to both parties to the contest.

207.

Recognition of belligerency by neutrals.

The recognition by a neutral nation of revolters as belligerents should not be based on sympathy but on justice and law, both of which require that revolters should not be recognized as belligerents until they have effected a political organization capable of performing the duties of a nation and of meeting the responsibilities of one, and have shown that their rebellion is in fact a war, and conducted according to the rules of war. If their political organization, instead of being duly constituted and exercising proper executive, legislative, and judicial functions in a substantial portion of territory, is simply documentary or migra

their forces, instead of being instructed and efficient armies, are only marauding bands, they are not entitled to receive recognition from a neutral nation; nor are they entitled to recognition if their numbers are too small to give them the hope of successfully coping with the forces of the legitimate government. Other arguments against recognition are to be found in such facts as that the leaders are ignorant, cruel, and depraved; that the contest is confined exclusively to the interior of the territory; and that the interests of the neutral or of mankind would be safer in the hands of the legitimate government than in those of the revolters. Additional reasons for granting recognition are supplied by such facts as that the revolters have a noble and just cause; that the legitimate government has oppressed them flagitiously; that they are possessed of ports and ships; that they have won substantial victories; that the legitimate government has exchanged prisoners with them and blockaded their ports, or treated them in other respects as belligerents; and that they are sufficiently honorable and intelligent to enforce rights and redress wrongs, and to establish, if successful in war, a nation worthy of entering the family of civilized nations.

208.

Effects of recognition.

The immediate effects of recognition of belligerency by a neutral are to release the legitimate government for all future misdeeds of the revolters, and to accord to both the legitimate government and

to the revolters all the rights of war on land and on the sea so far as the neutral itself and its citizens or subjects and their ships and goods are concerned. But the action of the neutral does not bind other neutrals, nor alter their former position towards the parties to the contest.

209.

A neutral nation does not divest itself of its neutrality by recognizing revolters as belligerents; nor may the legitimate government in the revolted nation or colony, much as it may deplore and deprecate the effect of such recognition in animating and encouraging the revolters, claim justly that the act of recognition is inconsistent with friendliness unless the neutral has wantonly disregarded existing facts.

Recognition not inconsistent with neutrality.

210.

When a neutral nation recognizes revolters as belligerents it thereby regards them as having all the rights of war; but as they have not yet secured their independence and formed a nation, it cannot properly treat them as belonging to the family of nations with the privilege of sending the usual diplomatic agents or consular officers, and with the power to make treaties with it and to perform all the other duties and enjoy all the other prerogatives of a sovereign nation. The revolters, however, when recognized as belligerents, may send diplomatic agents to a neutral to perform special duties, but they may not be regarded

Intercourse with belligerents by neutrals.

as having the representative character. The citizens or subjects of a neutral that has recognized revolters as belligerents may carry on trade with them or with the legitimate government, even in munitions of war, but always subject to the law of blockade and the law in regard to contraband of war.

211.

Recognition of independence.

Neutrals may justly recognize a revolted nation, state, or colony as independent when it has proved itself capable of defending and maintaining its independence. Until then they cannot recognize its independence without incurring the risk of being declared an enemy by the *de jure*, or legitimate, government which the revolters are opposing. As soon as its independence is recognized, diplomatic agents may be sent to it and received from it, and it may be admitted into the family of nations.

212.

Neutral nations.

A nation is neutral in respect to any powers at war when it maintains friendly relations with them and acts as an impartial *non hostis*. A nation may bind itself to remain permanently neutral, and other nations may guarantee its neutrality, and in that case it may only go to war if its neutrality is violated. Switzerland and Belgium are examples of permanently neutral nations. If neutral nations fear that their rights may not be respected, they may unite, as did the

Baltic powers in 1780 and 1800, and form an armed neutrality for the purpose of resistance; but if they undertake an aggressive policy they may no longer be considered neutrals.

213.

Duties of neutrals.

The first duty of a neutral is to maintain its neutrality so honestly and impartially that neither belligerent shall obtain from it any substantial advantage or privilege not accorded to the other. Minor advantages or privileges are sometimes provided for in treaties, and they are not inconsistent with neutrality if they do not virtually make the neutral an ally. Encroachments on its neutrality a neutral should resist, unless they may be properly allowed for reasons of humanity or courtesy. Thus a neutral may permit a belligerent's ships of war to run into its ports, and it may provide them with such provisions as they actually need, but not with munitions of war; and it may allow them to bring prizes into its ports. Furthermore a neutral may permit belligerent troops to pass through its territory, but not if one belligerent would be much more favored by this privilege than would be the other. On the other hand a neutral may refuse to allow any of these privileges to belligerents, and yet it would not be justified in refusing admission into its ports to ships of war in distress. Asylum a neutral should always grant to the defeated land forces of a belligerent, but they should be disarmed and not permitted to depart with their arms, and the victorious belligerent should not

be allowed to pursue them within the neutral's territory. Defeated ships-of-war may also seek asylum in neutral ports, but they need not be disarmed nor detained, and they must not be pursued and captured within the neutral's territorial waters. The more imperative specific duties of a neutral are not to allow its territory to be used as a base for operations by a belligerent; not to permit ships-of-war to be built or fitted out, or troops to be enlisted, within its territory, to aid a belligerent; and not to grant to either belligerent the use of its admiralty courts except when it is itself a party to the suit. A neutral is bound to use due diligence in performing all its duties and to act in good faith.

214.

Privileges of citizens of neutrals.

The citizens or subjects of a neutral, if its municipal laws or treaties do not forbid, may serve in the army or navy of a friendly belligerent; and may accept letters of marque authorizing them to undertake privateering expeditions. The present tendency of the nations, however, is to forbid these privileges to their citizens or subjects.

215.

Rights of neutrals.

The principal right of a neutral is to have its neutrality respected and to obtain satisfaction if it is violated. Thus if a ship is captured in its territorial waters, it may seize her from the captor, and return her to her owner, or require her to be restored to her

owner if she has been taken to the prize court of the captor. It has the right to send diplomatic agents and consular officers to an independent belligerent nation, and they may not be molested, and it is entitled to claim on land and sea all rights and privileges usually conceded to neutrals, and, in proper cases, to enforce such rights and privileges by reprisals or war.

216.

Mediation.

A nation that maintains its neutrality is in a position to offer its services, or to acquiesce in interposing them, as mediator in the internal or international controversies or contests of other nations. While the offer to mediate should never be discourteously received it should never be indelicately or inopportunely made, as, for instance, while a legitimate government is engaged with a fair chance of success in suppressing a rebellion or any other grave disorder. The essential prerequisite of mediation is that the Power undertaking it should be friendly, impartial, and agreeable to both parties. The object of mediation is to conciliate such parties, and to secure by fair advice and wise counsels the adjustment of their differences. The advice, however, need not be followed nor the counsels accepted, and, indeed, unless the mediator is invited to act, his friendly offices may be declined altogether. Mediation is frequently provided for in treaties: thus Article 8 of the treaty of Paris, 1856, stipulates that if there should arise

between the Sublime Porte and one or more of the other signing Powers any misunderstanding which might endanger the maintenance of their relations, the Sublime Porte, and each of the other Powers, before having recourse to the use of force, shall afford the other Contracting Parties the opportunity of preventing such an extremity by means of their mediation. The policy of the United States Government in regard to European questions has persistently been to refuse to act jointly with European Powers, and to act alone only on the invitation of both parties to the controversy or contest; and likewise, although it has frequently regarded with favor the interposition of the friendly offices of European Powers to settle disputes between other nations on the American continent, its traditional and actual policy has always restrained it from acting jointly with them, and, as a rule, from urging the parties to such disputes to accept it as their only mediator, although always ready to act as such at their united request.

217.

Arbitration is another friendly way of settling disputes. It differs from mediation in that the decision is binding on the parties unless it is unconscionable or plainly and unreasonably partial. When the arbitrator has rendered his decision, his duties are completed, as he is not empowered to enforce it, his functions being judicial and not executive. The question has some-

Arbitration.

times been raised whether a majority of a board of arbitrators may decide a controversy if there is no stipulation to that effect in the agreement of arbitration. The difference of opinion on this question is owing to the difference between Civil law, which is satisfied with a majority decision, and Common law, which prescribes unanimity: but Great Britain, one of the two great Common law nations, has recently declared itself in favor of a majority decision, unless the parties to the dispute provide otherwise; and, therefore, it would seem as if the other, the United States, might very properly hereafter either feel obliged to come to an agreement about this question before any case in which they are interested is submitted to a board of arbitration, or to accept afterwards a majority-decision without objection if they have neglected to come to an agreement at such time. Arbitration is now frequently provided for by treaty. The treaty of Washington, 1871, referred no fewer than four different disputes between the United States and Great Britain to arbitrators, and thereby set an example that will be to them forever an honor and a glory.

218.

Congresses or conferences.

When many nations are interested in the peaceful settlement of a dispute, they customarily summon a Congress, and solemnly embody their agreements in a treaty. In this manner some very delicate questions have been settled during recent years in regard to Southeaste

219.

Intervention.

Intervention is interference, and is justifiable only in extreme cases, as, for instance: to preserve sovereign rights or interests, to maintain the balance of power, to prevent iniquitous revolutions, to suppress crime of governments against their peoples, or to stop a nefarious action on the part of a strong power against a weaker one. As a rule, then, interference in the domestic affairs or the conflicts of another nation is illegal, impolitic, and inexcusable.

220.

Balance of power.

One of the most frequent excuses given by European nations for their interference in the affairs of one another has been that they wanted to preserve the balance of power, by which is understood that there must be no material aggrandizement undertaken by one nation that is dangerous or derogatory to the independence, influence, or territorial integrity of another nation. The maintenance of this principle often has prevented the weaker nations from being absorbed by the stronger or unduly brought under their influence: on the other hand it has sometimes furnished strong nations with an excuse for occupying the territory of weaker peoples. Thus Austria occupied Bosnia and Herzegovina for the declared purpose of checking Russian designs in Turkey. The theory of the balance of power has not yet been applied to the sea nor to the

territorial acquisitions of the European nations outside of their continent.

221.

Intervention may always be resisted by the nation directly affected by it, and, in proper cases, by other nations. Thus, for instance, when the Holy Alliance, formed after the battle of Waterloo, by Russia, Austria, Prussia, and France, with the object of defending and extending the principle of kingly rights or absolutism, thought of undertaking the restoration of the Spanish colonies in America to Spain, the United States and Great Britain expressed themselves so strongly in the matter that the plan was heard of no more, for force was evidently allied against force, and intervention against intervention. It was on this occasion that President Monroe gave utterance in his seventh Annual Message, 1823, to the sentiments that have since been known as "The Monroe Doctrine."

Resistance to intervention.

222.

The Monroe Doctrine, however, was levelled not only against the Holy Alliance, but also against Russia for claiming the title to the territory on the northwest coast of the American continent, from Bering Straits down to the fifty-first parallel of north latitude. Joining the principal sentiments expressed by President Monroe in his celebrated Message to Congress, his doctrine may be concisely stated

The Monroe Doctrine.

as follows: "The American continents, by the free and independent condition which they have assumed and maintain, are henceforth not to be considered as subject for future colonization by any European Powers, and we should consider any attempt on their part to extend their system to any portion of this hemisphere as dangerous to our peace and safety. With the existing colonies or dependencies of any European Power we have not interfered, and shall not interfere. But with the Governments who have declared their independence and maintained it, and whose independence we have, on great consideration and on just principles, acknowledged, we could not view any interposition for the purpose of oppressing them, or controlling in any other manner their destiny, by any European Power, in any other light than as the manifestation of an unfriendly disposition towards the United States."

This doctrine has never received the legislative sanction of Congress. It is simply a presidential declaration of national policy; but as such it has a strong hold on the mind and heart of the American people, and has always seemed to our sister American Republics as a great, if not their greatest, bulwark against European interference with their liberty and independence. Not one word, however, does it contain that justifies the belief that it was intended to relieve any American nation of its duty to meet all its obligations to European Powers, or to prevent such Powers from obtaining due satisfaction for any

wrong they may suffer or any injury they may sustain in their intercourse with the American peoples.

What it does contain is two plain statements, the first one being to the effect that the European nations must not attempt to acquire sovereignty or to extend their monarchical system over any American territory in addition to that which they already possess; and the second one being practically a promise that the United States will not interfere with the existing American colonies or dependencies of any European power. As the second is as clearly a part of the Monroe Doctrine as the first, it would seem as if Congress has exercised much wisdom and foresight in refusing to make it law, for occasions might easily arise when it would be the duty of the United States to interfere in the American colonies of European Powers: moreover, the right to interfere in proper cases in the affairs of adjacent nations is always too important to forego or to surrender. In the United States and in the other American nations the Monroe Doctrine is generally understood to be confined to the principle laid down in the first statement, and directed against the European Powers. That principle, however, is not a principle of international law, nor is it even, as has been stated, to be found in the municipal law of the United States. Its only practical value, therefore, is that it serves as a notice to European Powers of the specific grounds on which the United States will exercise the right of interfering to prevent them from acquiring or

controlling any American territory that does not already belong to them. As a warning, consequently, it is timely and useful, and it has the special and admirable merit of being at once courteous and frank: but it does not give to the United States any right to interfere that the general right of intervention does not give, and it cannot be doubted that the general right of intervention would alone be sufficient to authorize interference on the part of the United States in any case to which the Monroe Doctrine could be properly applied.

223.

Truces and peace.

War may be suspended by a truce or may be concluded by a peace. The former implies a return to hostilities, the latter to amity and intercourse. Peaces and general truces are made by those having the chief governmental power or by their agents, while special or local truces may be effected by subordinate military officials. Peaces and truces are binding on private individuals from either the actual time when they learn of them, or within a reasonable time after they have been made; but on the parties themselves they are binding from the moment they formally agree, unless some other time is named. Generally for hostile acts committed by a person in ignorance of the fact that a truce or peace has been made the nation to which such person belongs should be held liable. One of the highest duties of every individual, whether private

or official, and of every nation, is to refrain from unnecessary hostilities, and to lend their best efforts to secure and promote the blessings of peace for themselves and mankind.

SOME OF THE PRINCIPAL WRITERS ON INTERNATIONAL LAW.

Hugo Grotius, 1583–1645.
Samuel von Puffendorf, 1632–1694.
Christian von Wolf, 1679–1754.
Emmerich de Vattel, 1714–1767.
Cornelius von Bynkershoek, 1673–1743.
John Jacob Moser, 1701–1786.
George F. de Martens, 1756–1821.
J. L. Klüber, 1762–1835.
Jeremy Bentham, 1749–1832.
James Kent, 1763–1847.
Henry Wheaton, 1785–1848.
Robert Phillimore, 1810–1885.
Theodore D. Woolsey, 1801–1889.
Francis Wharton, 1820–1889.

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